

BELIZE:

BELIZE COMPANIES ACT, 2022

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SCHEDULE I

SCHEDULE II

SCHEDULE III

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No. 11 of 2022

I assent,

(H.E. MS. FROYLA TZALAM)
Governor-General

28th July 2022

AN ACT to repeal, replace and consolidate the International Business Companies Act, Chapter 270 of the Substantive Laws of Belize, Revised Edition 2020; and the Companies Act, Chapter 250 of the Substantive Laws of Belize, Revised Edition 2020; to further establish and facilitate a modernized framework for the registration, operation and regulation of companies; and to provide for matters connected therewith and incidental thereto.

(Gazetted July 28th, 2022).

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

PART I

Preliminary

1. This Act may be cited as the

Short title.

BELIZE COMPANIES ACT, 2022.

Interpretation.

2. In this Act, unless the context otherwise requires–

“approved stock exchange” means any securities exchange approved by order of the Commission from time to time;

“articles” means–

(a) the articles of incorporation, articles of amendment, articles of continuance, articles of consolidation, articles of merger, articles of dissolution or articles of restoration; or

(b) the original, amended or restated articles of association of a company;

“asset” includes intellectual property, money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

CAP. 51.

“Belize Tax Service Department” means the Belize Tax Service Department established under the Tax Administration and Procedure Act;

“Belize Companies and Corporate Affairs Registry” or “Registry” means the Belize Companies and Corporate Registry established under section 284 of this Act;

“Belizean shareholder” means a shareholder of Belizean nationality;

CAP. 104.

“beneficial owner” has the meaning specified in section 2 of the Money Laundering and Terrorism (Prevention) Act;

“board” in relation to a company means–

(a) the board of directors, committee of management, council or other governing authority of the company; or

(b) if the company has only one director, that director;

“by-laws” mean a legal document setting forth key rules and regulations governing the company’s day-to-day operations;

“CARICOM Single Market and Economy” means the regime established by the Revised Treaty of Chaguaramas, for the deeper integration of the national markets and economies of all Member States of the Community;

“Central Bank of Belize” means the Central Bank of Belize established under section 4 of the Central Bank of Belize Act;

CAP. 262.

“class” in relation to shares, means a class of shares each of which has the rights, privileges, limitations and conditions specified for that class in the articles;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;

CAP. 272.

“competent authority” means the Financial Services Commission, Central Bank of Belize, the Financial Intelligence Unit, Belize Tax Service Department the Financial Secretary and the Attorney General’s Ministry or as designated by law;

“Community” means the Caribbean Community established by Article 2 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy;

“Consolidated Revenue Fund” means the fund established by section 114 of the Belize Constitution;

CAP. 4.

“contract” includes a smart contract;

“Court” means the Supreme Court of Belize;

“creditor” means any person to whom a debt is owed and included a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;

“director” in relation to a company, a foreign company and any other body corporate includes a person occupying or acting in the position of director by whatever name called;

CAP. 272.

“Director General” means the person appointed under section 8 of the Financial Services Commission Act;

“document” means a document in any form;

“domestic and overseas regulatory authorities” has the same meaning as set out in the Securities Industry Act;

“extraordinary resolution” means a resolution that has been passed by a majority of not less than seventy five percent of such members, or any percentage as required by articles, as being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given;

“file” in relation to a document, means to file the document with the Registrar;

CAP. 138:02.

“Financial Intelligence Unit” means the Financial Intelligence Unit of Belize established under section 3 of the Financial Intelligence Unit;

CAP. 272.

“Financial Services Commission” means the Financial Services Commission established under the Financial Services Commission Act;

CAP. 270.
CAP. 250.

“former Act” means the International Business Companies Act or the Companies Act;

“foreign director” means a director that—

(a) is not of Belizean nationality; or

(b) a CARICOM National;

“foreign shareholder” means a shareholder that–

(a) is not of Belizean nationality; or

(b) a CARICOM National;

“former Act company” means a company incorporated, continued or registered under a former Act, but excludes a company incorporated outside Belize registered under Part VI of the Companies Act;

CAP. 250.

“licensed or regulated” has the meaning specified in the Money Laundering and Terrorism (Prevention) Act;

CAP. 104.

“limited company” means a company of a type specified in section 5(a), (b) or (c);

“member” in relation to a company means a person who is–

(a) a shareholder;

(b) a guarantee member; or

(c) a member of an unlimited company who is not a shareholder;

“Minister” means the Minister for the time being responsible for Finance;

“Official Receiver” means the person appointed by the Court under section 224 as liquidator for a company that is struck off the Register;

“ordinary resolution” means a resolution that has been passed by a majority of not less than fifty percent of such members, as being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution has been duly given;

CAP. 197.

“personal representative” has the meaning specified in the Administration of Estates Act;

“prescribed” means prescribed by the Regulations;

“records” includes accounting records;

“register”, in relation to an act done by the Registrar, means to register in the Belize Companies and Corporate Affairs Registry or any other register created pursuant to this Act or the Regulations;

“Register of Members” includes a register of shareholders;

CAP. 272.

“Registered Agent” means any person licensed under section 7 of the Financial Services Commission Act;

“Registrar” means the Director General of the Commission;

“registration number” means a unique number assigned to a company by the Registry by which the company may be identified;

“regulated entity” includes an entity regulated in accordance with the Financial Services Commission Act;

“restated articles” means a single document that incorporates the articles together with all amendments made to it;

“shareholder”, in relation to a company, includes—

(a) a person who holds shares in a company;

(b) the trustee in bankruptcy of a bankrupt shareholder;

“sign” or “signed” means to affix a person’s signature manually, by facsimile or electronically;

“smart contract” is a computer program recorded on a distributed ledger system executing pre-defined functions;

“special resolution” means a resolution—

- (a) passed in manner required for the passing of an extraordinary resolution; and
- (b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting; and

“surplus”, in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities as shown in the books of account, plus its capital.

3.–(1) Unless this Act provides otherwise, “company” means—

- (a) a Belize company incorporated under section 7;
- (b) a company continued as a Belize company under section 178; or
- (c) a company registered to operate or hold assets in Belize,

Meaning of
“company”
and “foreign
company.”

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside Belize in accordance with section 180.

(2) In this Act, “foreign company” means a body corporate incorporated, registered or formed outside Belize but excludes a company within the meaning of sub-section (1).

(3) The Regulations may prescribe types of bodies, associations and entities that, although not a body corporate, are to be treated as a body corporate for the purposes of sub-section (2).

Meaning of
“subsidiary”
and “holding
company.”

4.–(1) A company (the first company) is a subsidiary of another company (the second company), if–

(a) the second company–

(i) holds a majority of the voting rights in the first company;

(ii) is a member of the first company and has the right to appoint or remove a majority of its board; or

(iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the first company; or

(b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) For the purposes of sub-section (1) and (2), “company” includes a foreign company and any other body corporate.

PART II

*Incorporation, Capacity and Powers**Sub-Part 1**Incorporation*

5. A company may be incorporated or continued under this Act as–

Types of company.

- (a) a company limited by shares;
- (b) a company limited by guarantee that is not authorised to issue shares;
- (c) a company limited by guarantee that is authorised to issue shares;
- (d) an unlimited company that is not authorised to issue shares; or
- (e) an unlimited company that is authorised to issue shares.

6.–(1) Subject to sub-section (2), application may be made to the Registrar for the incorporation of a company by filing–

Application to incorporate a company.

- (a) articles complying with section 9; or
- (b) if the company is to be incorporated as a segregated portfolio company, the written approval of the Commission given under section 132(1); and
- (c) such other documents as may be prescribed or notified by the Registrar.

(2) Unless otherwise prescribed by Regulations, an application for the incorporation of a company may be filed only by the Registered Agent and the Registrar shall not accept an application for the incorporation of a company filed by any other person.

(3) Notwithstanding sub-section (2), an application for the incorporation of a domestic company without any foreign shareholders or directors may be made to the Registrar without requiring such application to be made by a Registered Agent.

Incorporation
of a company.

7.-(1) If the Registrar is satisfied that the requirements of this Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of the documents filed under section 6(1)-

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

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

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

Registration
of company as
special purpose
company.

8.-(1) If the articles of a company limited by shares, as filed under section 6, contains the statements specified in section 10(1) and (2)-

- (a) the company shall be registered on incorporation as having special purposes; and
- (b) the certificate of incorporation shall state that the company is a special purpose company.

(2) A company that is not registered as a special purpose company on its incorporation shall not subsequently be registered as a special purpose company.

*Sub- Part 2**Articles*

- 9.-(1) The articles of a company shall state— Articles.
- (a) the name of the company;
 - (b) whether the company is—
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee that is not authorised to issue shares;
 - (iii) a company limited by guarantee that is authorised to issue shares;
 - (iv) an unlimited company that is not authorised to issue shares; or
 - (v) an unlimited company that is authorised to issue shares;
 - (c) the address of the registered office of the company;
 - (d) the name of the Registered Agent of the company (unless otherwise permitted by Regulations);
 - (e) in the case of a company that is authorised to issue shares—
 - (i) the maximum number of shares that the company is authorised to issue or that the company is authorised to issue an unlimited number of shares; and
 - (ii) the classes of shares that the company is authorised to issue and, if the company is

authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attached to each class of shares;

- (f) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that a voluntary liquidator or an insolvency liquidator is appointed whilst he is a member; and
- (g) in the case of a segregated portfolio company, that the company is a segregated portfolio company.

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

(3) The Regulations may require the articles of a company to contain a statement, in the form specified in the Regulations, as to any limitations on the business that the company may carry on.

Additional matters to be stated in articles of special purpose company.

10.—(1) The articles of a company limited by shares may state that the company is a special purpose company.

(2) The articles of a special purpose company shall state the purposes of the company.

(3) Nothing in this section prevents the articles or by-laws of a company that is not a special purpose company from limiting the purposes, capacity, rights, powers or privileges of the company.

Effect of articles and by-laws.

11.—(1) The articles and by-laws of a company are binding as between—

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

(2) The company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Act except to the extent that they are negated or modified, as permitted by this Act, by the articles or by-laws of the company.

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

12.—(1) Subject to sub-section (2) and section 14, the members of a company may, by resolution, amend the articles or by-laws of the company.

**Amendment of
articles and by-
laws.**

(2) Subject to sub-section (3), the articles of a company may include one or more of the following provisions—

- (a) that specified provisions of the articles or by-laws may not be amended;
- (b) that a resolution passed by a specified majority of members, greater than fifty per cent, is required to amend the articles or by-laws or specified provisions of the articles or by-laws;
and
- (c) that the articles or by-laws, or specified provisions of the articles or by-laws, may be amended only if certain specified conditions are met.

(3) Sub-section (2) does not apply to any provision in the articles of a company that is not a special purpose company that restricts the purposes of that company.

(4) Subject to sub-section (5), the articles of a company may authorise the directors, by resolution, to amend the articles or by-laws of the company.

(5) Notwithstanding any provision in the articles or by-laws to the contrary, the directors of a company shall not have the power to amend the articles or by-laws—

- (a) to restrict the rights or powers of the members to amend the articles or by-laws;
- (b) to change the percentage of members required to pass a resolution to amend the articles or by-laws; or
- (c) in circumstances where the articles or by-laws cannot be amended by the members,

and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this sub-section.

Filing of
notice of
amendment of
articles or by-
laws.

13.—(1) Where a resolution is passed to amend the articles or by-laws of a company, the company shall file for registration—

- (a) a notice of amendment in the approved form; or
- (b) the restated articles or by-laws incorporating the amendment made.

(2) An amendment to the articles or by-laws has effect from the date that the notice of amendment, or restated articles or by-laws incorporating the amendment, is registered by the Registrar or from such other date as may be ordered by the Court under sub-section (5).

(3) A company, a member or director of a company or any interested person may apply to the Court for an order that an amendment to the articles or by-laws should have

effect from a date no earlier than the date of the resolution to amend the article or by-laws.

(4) An application under sub-section (3) may be made—

- (a) on, or at any time after, the date of the resolution to amend the articles or by-laws; and
- (b) before or after the notice of amendment, or the restated articles or by-laws, has been filed for registration.

(5) The Court may make an order on an application made under sub-section (3) where it is satisfied that it would be just to do so but if, at the time of the order, the notice of amendment, or restated articles or by-laws, has not been filed, the Court shall order that the notice of amendment, or restated articles or by-laws, must be filed within a period not exceeding five days after the date of the order.

14.—(1) A special purpose company shall not amend its articles to delete or modify the statement specified in section 10(1) and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this sub-section.

**Amendment
of articles
with respect to
special purpose.**

(2) Subject to section 12(2), a special purpose company may amend its articles to modify its purposes.

(3) A company that is not a special purpose company shall not amend its articles to state that it is a special purpose company and any resolution of the members or directors of a company is void and of no effect to the extent that it contravenes this sub-section.

15.—(1) A company may, at any time, file its restated articles or by-laws.

**Restated
articles or by-
laws.**

(2) Restated articles or by-laws filed under sub-section (1) shall incorporate only such amendments that have been registered under section 13.

(3) Where a company files restated articles or by-laws under sub-section (1), the restated articles or by-laws have effect as the articles or by-laws of the company with effect from the date that they are registered by the Registrar.

(4) The Registrar is not required to verify that restated articles or by-laws filed under this section incorporates all the amendments, or only those amendments, that have been registered under section 13.

Provision of copies of articles and by-laws to members.

16.—(1) A copy of the articles, either in digital or hard copy form, shall be sent to any member who requests a copy in writing.

(2) A company that contravenes sub-section (1) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Sub-Part 3

Company Names

Required part of company name.

17.—(1) Subject to sub-sections (3), (4), (5) and (6), the name of a limited company shall end with—

- (a) the word “Limited”, “Corporation” or “Incorporated”;
- (b) the words “Société Anonyme”, Aktiengesellschaft or “Sociedad Anonima”;
- (c) the abbreviation “Ltd”, “Corp”, “Inc”, “AG”, “Pvt” or “S.A.”; or

(d) such other word or words, or abbreviations thereof, as may be specified in the Regulations.

(2) The name of an unlimited company shall end with the word “Unlimited” or the abbreviation “Unltd”.

(3) The name of a special purpose company shall end with the phrase “(SPV) Limited” or the phrase “(SPV) Ltd.”.

(4) The name of a segregated portfolio company shall include the designation “Segregated Portfolio Company” or “SPC” placed immediately before one of the endings specified in sub-section (1), or a permitted abbreviation thereof.

(5) The name of a segregated portfolio company that is a special purpose company shall include the designation “(SPV)” immediately before or immediately after the designation specified in sub-section (4).

(6) The name of a private trust company shall end with the words “Private Trust Company” or the abbreviation “PTC”.

(7) Where the abbreviation “Ltd”, “Corp”, “Inc”, “PTC”, “Pvt” or “Unltd” is used, a full stop may be inserted at the end of the abbreviation.

(8) A company may use, and be legally designated by, either the full or the abbreviated form of any word or words required as part of its name under this section.

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

Restriction on company names.

(a) the use of which would contravene another enactment or the Regulations;

- (b) that, subject to section 24–
- (i) is identical to the name under which a company is or has been registered under this Act or a former Act; or
 - (ii) is so similar to the name under which a company is or has been registered under this Act or a former Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
- (c) that is identical to a name that has been reserved under section 25 or that is so similar to a name that has been reserved under section 25 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;
- (d) that contains a restricted word or phrase, unless the Registrar has given his prior written consent or issued a letter of no objection to the use of the word or phrase;
- (e) that, in the opinion of the Registrar, is offensive or, for any other reason, objectionable;
- (f) contains the words “Building Society”, “Chamber of Commerce”, “Chartered”, “Imperial”, “Monarchy”, “Municipal”, “Royal”, or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest–
- (i) the patronage of Her Majesty or that of a member of the Royal Family; or

- (ii) a connection with the Government of Belize or department thereof, except with the approval of the Registrar in writing;
- (g) contains any one or more of the words “Academy”, “Asset Management”, “Assurance”, “Bank”, “Brokerage”, “Credit Union”, “Education”, “Fiduciary”, “Financial”, “Foreign Exchange”, “Forex”, “Fund”, “Investment Management”, “Insurance”, “Lending”, “Securities”, “Trust”, or “University” or any of their derivatives or cognate expressions, unless it is licensed under the enactment or enactments that authorize it to carry on the business or activities associated with the word or words, so contained; or
- (h) contains the top-level domain such as “.com”, “.org”, “.net” or “.bz” of a domain name or any word or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest that the business or activities associated is of an electronic commerce nature or providing digital technology services, unless that is the business or activity of the company.

(2) For the purposes of sub-section (1)(d), the Commission may, by notice published in the *Gazette* or other publication as the Commission chooses, specify words or phrases as restricted words or phrases.

19. –(1) The name of a company may comprise of the same numbers as its registration number and the ending required by section 17 that is appropriate for the company.

Registration number as company name.

(2) A company name may comprise foreign characters, numbers and letters

20. –(1) A company may have additional foreign character names approved by the Registrar.

Foreign character name.

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

Company may
change name.

21.—(1) Subject to its articles and by-laws, a company may make application to the Registrar in the approved form to change its name or its foreign character name.

(2) If he is satisfied that the proposed new name or foreign character name of the company complies with section 17 and, if appropriate, sections 19 and 20 and is a name under which the company could be registered under section 18, the Registrar shall on receipt of an application under sub-section (1)—

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

Registrar may
direct change
of name.

22.—(1) If the Registrar considers, on reasonable grounds, that the name of a company does not comply with sections 17, 18, 19 or 20, he may by written notice direct the company to make application to change its name on or before a date specified in the notice, which shall be not less than twenty-one days after the date of the notice.

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

(3) Where the Registrar assigns a new name to a company under sub-section (2), he shall—

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

- (c) issue notice of the change of name in the *Gazette* or such other publication as determined by the Registrar.

23.—(1) A change of the name of a company under section 21 or 22—

Effect of change of name.

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

(2) Where the name of the company is changed under section 21 or 22, the company's articles and by-laws are deemed to be amended to state the new name with effect from the date of the change of name certificate.

24. The Regulations may provide for the re-use of names previously used by companies that are, or have been, registered under this Act or by the former Act that have changed their name;

Re-use of company names.

25.—(1) The Registrar may, upon a request made by a Registered Agent in the approved form, reserve for ninety days a name for future adoption by a company under this Act.

Reservation of name.

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

(3) A request to reserve a name under sub-section (1) for a period of more than ten days shall be accompanied by the prescribed fee.

Use of company name.

26.—(1) Subject to section 17, a company shall ensure that its full name and, if it has one its foreign character name, is clearly stated in—

- (a) every written communication sent by, or on behalf of, the company; and
- (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) A company that contravenes sub-section (1) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Sub-Part 4

Capacity and Powers

Separate legal personality.

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

Capacity and powers.

28.—(1) Subject to this Act, any other enactment and its articles and by-laws, a company has, irrespective of corporate benefit—

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transactions; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) Without limiting sub-section (1), subject to its articles and by-laws, the powers of a company include the power to do the following—

- (a) unless it is a company limited by guarantee or an unlimited company that is not authorised to issue shares—

- (i) issue and cancel shares and hold treasury shares;
 - (ii) grant options over unissued shares in the company and treasury shares;
 - (iii) issue securities that are convertible into shares; and
 - (iv) give financial assistance to any person in connection with the acquisition of its own shares;
- (b) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;
- (c) guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (d) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) For the purposes of sub-section (2)(d), the directors may cause the company to transfer any of its assets in trust to one or more trustees, each of which may be an individual, company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries of the trust.

(4) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under sub-section (3), and those

rights or interests may be pleaded against any transferee in any such transfer.

Validity of acts of company.

29.—(1) No act of a company and no transfer of an asset by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

(2) Sub-section (1) does not apply with respect to a special purpose company.

Personal liability.

30. Subject to section 99, no director, agent or voluntary liquidator of a company is liable for any debt, obligation or default of the company, unless specifically provided in this Act, in any other enactment, the articles, or agreements made, and except in so far as he may be liable for his own conduct or acts.

Dealings between company and other persons.

31.—(1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—

- (a) this Act or the articles of the company has not been complied with;
- (b) a person named as a director in the company's register of directors—
 - (i) is not a director of the company;
 - (ii) has not been duly appointed as a director of the company; or
 - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

- (c) a person held out by the company as director, employee or agent of the company—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

(2) Sub-section (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that sub-section acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

32.—(1) A person is not deemed to have notice or knowledge of any document relating to a company, including the articles,

Constructive
notice.

or of the provisions or contents of any such document, by reason only of the fact that a document–

- (a) is available to the public from the Registrar; or
 - (b) is available for inspection at the registered office of the company or at the office of its Registered Agent.
- (2) Sub-section (1) does not apply–
- (a) in relation to a document filed under Part II; or
 - (b) to a document relating to a special purpose company.

PART III

Shares

Sub-Part I

General

Legal nature of shares.

33. A share in a company is personal property.

Rights attaching to shares and classes of shares.

34.–(1) Subject to sub-section (2), a share in a company confers on the holder–

- (a) the right to one vote at a meeting of the shareholders of the company or on any resolution of the shareholders of the company;
- (b) the right to an equal share in any dividend paid in accordance with this Act; and
- (c) the right to an equal share in the distribution of the surplus assets of the company.

(2) Where expressly authorised by its articles in accordance with section 9(1)(e), a company—

- (a) may issue more than one class of shares; and
- (b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).

35. Subject to its articles and by-laws, a company may issue a class of shares in one or more series, with each share in the series having the rights, privileges, restrictions and conditions for that series as specified in the articles of the company, provided that each share in the series shall have the same rights, privileges, restrictions and conditions as all other shares in the same class.

Series of shares.

36.—(1) Without limiting section 34(2)(b), shares in a company may—

Types of shares.

- (a) be redeemable;
- (b) confer no rights, or preferential rights, to distributions of capital or income;
- (c) confer special, limited or conditional rights, including voting rights;
- (d) confer no voting rights;
- (e) participate only in certain assets of the company; and
- (f) be issued in certificated or uncertificated form.

(2) Subject to its articles and by-laws, a company may issue bonus shares, partly paid shares and nil paid shares.

Par value and no par value shares.

37. Subject to the articles and by-laws of a company—

- (a) a share may be issued with or without a par value; and
- (b) a share with a par value may be issued in any currency.

Issue and transfer of bearer shares prohibited.

38.—(1) A company, including a segregated portfolio company, has no power to, and shall not—

- (a) issue a bearer share;
- (b) convert a registered share to a bearer share; or
- (c) exchange a registered share for a bearer share.

(2) A company that contravenes sub-section (1) commits an offence and is liable on indictment to a fine of \$100,000.

Fractional shares.

39.—(1) Subject to its articles, a company may issue fractional shares.

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

Change in number of shares a company is authorised to issue.

40.—(1) Where the articles of a company are amended to change the maximum number of shares that the company is authorised to issue, the company shall, together with the notice of amendment of its articles or the restated articles filed under section 13(1), file a notice in the approved form.

(2) A company that contravenes sub-section (1) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Division and combination of shares.

41.—(1) Subject to its articles, a company may—

- (a) divide its shares, including issued shares, into larger number of shares; or
- (b) combine its shares, including issued shares, into a smaller number of shares.

(2) A division or combination of shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

(3) A company shall not divide its shares under sub-section (1)(a) or (2) if it would cause the maximum number of shares that the company is authorised to issue by its articles to be exceeded.

(4) Where shares are divided or combined under this section, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

42.-(1) A company shall keep a register of members containing, as appropriate for the company—

Register of
members.

- (a) the full names and most recent addresses of the persons who hold registered shares in the company;
- (b) the number of each class and series of registered shares held by each shareholder;
- (c) the full names and most recent address of the persons who are guarantee members of the company;
- (d) the full names and most recent address of the persons who are unlimited members;
- (e) the date on which the name of each member was entered in the register of members; and

(f) the date on which any person ceased to be a member.

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

(3) The Regulations may provide for the circumstances in which information relating to persons who are no longer members of a company, that have been cancelled, may be deleted from the register of members.

(4) Notwithstanding sub-section (3), information relating to persons who are no longer members of a company, that have been cancelled, shall be retained for at least 6 years after the cessation of membership.

(5) A company that contravenes sub-section (1) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

(6) For the purposes of sub-section (1), a reference to a member includes a reference to a shareholder unless the context otherwise requires.

Register of
members as
evidence of
legal title.

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

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

- (a) exercise any voting rights attaching to the share;
- (b) receive notices;
- (c) receive a distribution in respect of the share;
and

- (d) exercise other rights and powers attaching to the share.

44.-(1) If-

**Rectification
of register of
members.**

- (a) information that is required to be entered in the register of members under section 42 is omitted from the register or inaccurately entered in the register; or
- (b) there is unreasonable delay in entering the information in the register,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified, and the Court may either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under sub-section (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between-

- (a) two or more members or alleged members; or
- (b) between members or alleged members and the company,

and generally the Court may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

45.-(1) A company shall state in its articles the circumstances in which share certificates shall be issued.

**Share
certificates.**

(2) If a company issues share certificates, the certificates shall be-

- (a) signed by at least one director of the company or by such other person who may be authorised by the articles or by-laws to sign share certificates; or
- (b) under the common seal of the company, with or without the signature of any director of the company,

and the articles may provide for the signatures or common seal to be facsimiles.

Sub-Part 2

Issue of Shares

Issue of
Shares.

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

Pre-emptive
rights.

47.—(1) Sub-sections (2) to (4) apply to a company where the articles or by-laws expressly provide that this section shall apply to the company, but not otherwise.

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

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

(4) An offer made under sub-section (2) shall remain open for acceptance for a reasonable period of time.

(5) Notwithstanding the requirements of this section, the articles or by-laws of a company may make different provisions with respect to pre-emptive rights other than those set out in this section.

48.—(1) Subject to sub-section (2), a share may be issued for consideration in any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.

Consideration
of shares.

(2) The consideration for a share with par value shall not be less than the par value of the share.

(3) If a share is issued in contravention of sub-section (2), the person to whom the share is issued is liable to pay to the company an amount equal to the difference between the issue price and the par value.

49. Before issuing shares for a consideration other than money, the directors shall pass a resolution stating—

Shares
issued for
consideration
other than
money.

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

50. The issue by a company of a share that—

Consent to issue
of shares.

- (a) increases a liability of a person to the company;
or

- (b) imposes a new liability on a person to the company,

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

Time of issue.

51. A share is deemed to be issued when the name of the shareholder is entered in the register of members.

Forfeiture of shares.

52.—(1) The articles or by-laws of a company, or the terms on which shares in a company are issued, may contain provisions for the forfeiture of shares which are not fully paid for on issue.

(2) Any provision in the articles or by-laws, or the terms on which shares in a company are issued, providing for the forfeiture of shares shall contain a requirement that a written notice of call specifying a date for payment to be made shall be served on the member who defaults in making payment in respect of the share.

(3) The written notice of call referred to in sub-section (2) shall name a further date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

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

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled

pursuant to sub-section (4) and that member shall be discharged from any further obligation to the company.

Sub-Part 3

Transfer of Shares

53.—(1) Subject to any limitations or restrictions on the transfer of shares in the articles or by-laws, or in legislation in relation to regulated companies, a share in a company is transferable.

Transferability of shares.

(2) Subject to the company receiving satisfactory confirmation of their appointment, the personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of the transfer.

54. Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the articles or by-laws of the company.

Transfer of shares by operation of law.

55.—(1) Registered shares may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee or electronically via a securities exchange system in relation to the shares of a company listed on an approved stock exchange.

Method of transfer of registered share.

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

(3) The written instrument of transfer of a registered share shall be sent to the company for registration.

(4) A transfer which is processed electronically shall be notified to the company for registration.

(5) Subject to the articles and to sub-sections (6) and (8), the company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of

members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

(6) The directors shall not pass a resolution refusing or delaying the registration of a transfer unless this Act or the articles permits them to do so or if the company is listed on an approved stock exchange.

(7) Where the directors pass a resolution under subsection (5), the company shall, as soon as practicable, send the transferor and the transferee a notice of the refusal or delay in the approved form.

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

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

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

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

Sub-Part 4

Distribution

56.—(1) For the purposes of this Sub-Part, a company satisfies the solvency and liquidity test at a particular time if, considering all reasonably foreseeable financial circumstances of the company at that time—

- (a) the assets of the company, as fairly valued, equal or exceed the liabilities of the company, as fairly valued; and
 - (b) it appears that the company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 months after the date on which the test is considered.
- (2) For the purposes of sub-section (1)–
- (a) any financial information to be considered concerning the company must be based on–
 - (i) accounting records that satisfy the requirements of section 88; and
 - (ii) where applicable, financial statements prepared by the directors;
 - (b) subject to paragraph (c), the board or any other person applying the solvency and liquidity test to a company–
 - (i) shall consider a fair valuation of the company's assets and liabilities, including any reasonably foreseeable contingent assets and liabilities, irrespective of whether or not arising as a result of the proposed distribution, or otherwise; and
 - (ii) may consider a fair valuation of the company's assets and liabilities that is reasonable in the circumstances; and
 - (c) unless the articles of incorporation of the company provides otherwise, when a person applying the test in respect of a distribution

as defined in sub-section (3), a person is not to include as a liability any amount that would be required, if the company were to be liquidated at the time of the distribution, to satisfy the preferential rights upon liquidation of shareholders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those receiving the distribution.

(3) For the purposes of sub-section (2), “distribution”, in relation to a distribution by a company to a member, means—

- (a) the direct or indirect transfer of an asset, other than the company’s own shares, to or for the benefit of the member; or
- (b) the incurring of a debt to or for the benefit of a member,

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

Distributions.

57.—(1) Subject to this Part and to the articles and by-laws of the company, the directors of a company may, by resolution, authorise a distribution by the company to members at such time and of such an amount, as it thinks fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

(2) A resolution of directors passed under sub-section (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.

(3) If, after a distribution is authorised and before it is made, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

58.—(1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member unless—

Recovery of distribution made when company did not satisfy solvency test.

- (a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the member has altered his position in reliance on the validity of the distribution; and
- (c) it would be unfair to require repayment in full or at all.

(2) If, by virtue of section 57(3), a distribution is deemed not to have been authorised, a director who—

- (a) ceased, after authorisation but before the making of the distribution, to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made; and
- (b) failed to take reasonable steps to prevent the distribution being made,

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If, in an action brought against a director or member under this section, the Court is satisfied that the company

could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may—

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

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

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

59.—(1) Subject to section 57, a company may purchase, redeem or otherwise acquire its own shares in accordance with either—

- (a) sections 60, 61 and 62; or
- (b) such other provisions for the purchase, redemption or acquisition of its own shares as may be specified in its articles or by-laws.

(2) Sections 60, 61 and 62 do not apply to a company to the extent that they are negated, modified or inconsistent with provisions for the purchase, redemption or acquisition of its own shares specified in the company's articles or by-laws.

(3) Where a company may purchase, redeem or otherwise acquire its own shares otherwise than in accordance with sections 60, 61 and 62, it may not purchase, redeem or otherwise acquire the shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted by the articles or by-laws to purchase, redeem or otherwise acquire the shares without that consent.

(4) Unless the shares are held as treasury shares in accordance with section 65, any shares acquired by a company are deemed to be cancelled immediately on purchase, redemption or other acquisition.

60.—(1) The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is—

Process for purchase, redemption or other acquisition of own shares.

- (a) to all shareholders to purchase, redeem or otherwise acquire shares issued by the company that—
 - (i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and
 - (ii) affords each shareholder a reasonable opportunity to accept the offer; or
- (b) to one or more shareholders to purchase, redeem or otherwise acquire shares—
 - (i) to which all shareholders have consented in writing; or
 - (ii) that is permitted by the articles or by-laws and is made in accordance with section 61.

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

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

Offer to
one or more
shareholders.

61.—(1) The directors of a company shall not make an offer to one or more shareholders under section 60(1)(b) unless they have passed a resolution stating that, in their opinion—

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

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

(3) The directors shall not make an offer to one or more shareholders under section 60(1)(b) if, after the passing of a resolution under sub-section (1) and before the making of the offer, they cease to hold the opinions specified in sub-section (1).

(4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under section 60(1)(b) on the grounds that—

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

Shares
redeemed
otherwise than
at option of
company.

62.—(1) If a share is redeemable at the option of the shareholder and the shareholder gives the company proper notice of his intention to redeem the share—

- (a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;
- (b) unless the share is held as a treasury share under section 64, the share is deemed to be cancelled; and
- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) If a share is redeemable on a specified date—

- (a) the company shall redeem the share on that date; and
- (b) unless the share is held as a treasury share under section 64, the share is deemed to be cancelled.

(3) Where a company redeems a share under sub-sections (1) and (2), sections 60 and 61 do not apply.

63. The purchase, redemption or other acquisition by a company of one or more of its own shares is deemed not to be a distribution where—

- (a) the company redeems the share or shares under and in accordance with section 62;
- (b) the company redeems the share or shares pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company; or
- (c) the company purchases, redeems or otherwise acquires the share or shares by virtue of the provisions of section 174.

Purchases redemptions or other acquisitions deemed not to be a distribution.

Treasury shares.

64.—(1) A company or its subsidiary may hold shares that have been purchased, redeemed or otherwise acquired under section 59 as treasury shares if—

- (a) the articles of the company do not prohibit it from holding treasury shares;
- (b) the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and
- (c) the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company or its subsidiary as treasury shares, does not exceed fifty per cent of the shares of that class previously issued by the company, excluding shares that have been cancelled.

(2) All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it or its subsidiary holds the share as a treasury share.

Transfer of treasury shares.

65. Treasury shares may be transferred by the company or its subsidiary and the provisions of this Act and the articles and by-laws that apply to the issue of shares apply to the transfer of treasury shares.

Mortgages and charges of shares.

66.—(1) A mortgage or charge of shares of a company shall be in writing signed by, or with the authority of the registered holder of the registered share to which the mortgage or charge relates.

(2) A mortgage or charge of shares of a company need not be in any specific form but it shall clearly indicate—

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

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

(3) Where the governing law of a mortgage or charge of shares in a company is not the law of Belize—

- (a) the mortgage or charge shall be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagee or chargee as a member of the company and the company shall continue to be governed by the articles and the articles of the company and this Act.

(4) Where the governing law of a mortgage or charge of shares in a company is the law of Belize, in the case of a default by the mortgagor or chargor on the terms of the mortgage or charge, the mortgagee or chargee is entitled to the following remedies—

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares;
- (b) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to buy the shares at fair value in satisfaction or partial satisfaction of the outstanding debt; and
- (c) the right to appoint a receiver [or liquidator] who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may—

- (i) vote the shares;
- (ii) receive distributions in respect of the shares; and
- (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until such time as the mortgage or charge is discharged.

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

- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b) secondly, in discharging the sums secured by the mortgage or charge; and
- (c) thirdly, in paying any balance due to the mortgagor or chargor.

(6) Where the governing law of a mortgage or charge of shares in a company is the law of Belize, the remedies referred to in sub-section (5) are not exercisable until—

- (a) default has occurred and has continued for a period of not less than thirty days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
- (b) the default has not been rectified within fourteen days or such shorter period as may be specified in the instrument creating the mortgage or charge from service of the notice specifying the default and requiring rectification thereof.

(7) In the case of a mortgage or charge of registered shares there may be entered in the register of members of the company—

- (a) a statement that the shares are mortgaged or charged;
- (b) the name of the mortgagee or chargee; and
- (c) the date on which the statement and name are entered in the register of members.

(8) A copy of the mortgage or charge of shares referred to in sub-section (1) shall be registered with the Registrar.

(9) A mortgage or charge of shares of a company may specify that the Law of Property Act and Registered Lands Act shall not apply to the mortgage or charge.

CAP. 190.
CAP. 194.

PART IV

Members

67. In this Part—

“guarantee member”, in relation to a company, means a person whose name is entered in the register of members as a guarantee member;

“shareholder”, in relation to a company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company; and

“unlimited member”, in relation to a company, means a person whose name is entered in the register of members as a member who has unlimited liability for the liabilities of the company.

Meaning of
“shareholder”,
“guarantee
member” and
“unlimited
member.”

Company
to have one
or more
members.

68.—(1) Subject to sub-section (2), a company shall at all times have one or more members.

(2) Sub-section (1) does not apply during the period from the incorporation of the company to the appointment of its first directors under section 104(1).

(3) In the case of a company limited by guarantee, whether or not authorised to issue shares, at least one of the members of the company shall be a guarantee member and where the company is authorised to issue shares, a guarantee member may also be a shareholder.

(4) In the case of an unlimited company, whether or not authorised to issue shares, at least one of the members of the company shall be an unlimited member and where the company is authorised to issue shares, an unlimited member may also be a shareholder.

Liability of
members.

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

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

- (a) any amount unpaid on a share held by the shareholder;
- (b) any liability expressly provided for in the articles or by-laws of the company; and
- (c) any liability to repay a distribution under section 58(1).

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

- (a) the amount that the guarantee member is liable to contribute as specified in the articles in accordance with section 9(1)(f); and

- (b) any other liability expressly provided for in the articles or by-laws of the company; and
- (c) any liability to repay a distribution under section 58(1).

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

70.—(1) Unless otherwise specified in this Act or in the articles or by-laws of a company, the exercise by the members of a company of a power which is given to them under this Act or the by-laws or articles shall be by a resolution—

Members' resolutions.

- (a) passed at a meeting of members held pursuant to section 72; or
- (b) passed as a written resolution in accordance with section 77.

(2) A resolution is passed if approved by a majority of in excess of fifty per cent or, if a higher majority is required by the articles or by-laws, that higher majority, of the votes of those members entitled to vote and voting on the resolution.

(3) For the purposes of sub-section (2)—

- (a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and
- (b) unless the articles or by-laws otherwise provide, a guarantee member and an unlimited member is entitled to one vote on any resolution on which he is entitled to vote.

71.—(1) Subject to a company's articles and by-laws, the following may convene a meeting of the members of the company at any time—

Meetings of members.

- (a) the directors of the company; or
- (b) such person or persons as may be authorised by the articles or by-laws to call the meeting.

(2) Subject to a provision in the articles or by-laws for a lesser percentage, the directors of a company shall call a meeting of the members of the company if requested in writing to do so by members entitled to exercise at least thirty per cent of the voting rights in respect of the matter for which the meeting is requested.

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

(4) Subject to the articles or by-laws of a company, a member of the company shall be deemed to be present at a meeting of members if—

- (a) he participates by telephone or other electronic means; and
- (b) all members participating in the meeting are able to hear each other.

(5) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

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

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

- (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if two or more are present in person or by proxy, they must vote as one.

72.—(1) Subject to a requirement in the articles or by-laws to give longer notice, a person or persons convening a meeting of the members of a company shall give not less than seven days' notice of the meeting to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting.

Notice of meetings of members.

(2) Notwithstanding sub-section (1), and subject to the articles or by-laws, a meeting of members held in contravention of the requirement to give notice is valid if members holding a ninety per cent majority, or such lesser majority as may be specified in the articles or by-laws, of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part.

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

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

73. The quorum for a meeting of the members of a company for the purposes of a resolution of members is that fixed by the articles or by-laws but, where no quorum is so fixed, a

Quorum for meetings of members.

meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy, members entitled to exercise at least fifty percent of the votes.

Voting trusts.

74.—(1) One or more shareholders of a company may, by agreement in writing, transfer registered shares to any person, authorised to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply—

- (a) the agreement may contain any other provisions not inconsistent with the purpose of the agreement;
- (b) a copy of the agreement shall be deposited at the registered office of the company and shall be open to the inspection—
 - (i) by members of the company—
 - (A) in the case of any beneficiary of the trust under the agreement, daily during business hours; and
 - (B) in the case of members of the company, subject to the provisions of section 91; and
 - (ii) by the Registrar or by other competent authority in Belize at its request;
- (c) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;

- (d) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby in the case of registered shares are held by the person named therein pursuant to an agreement;
- (e) there shall be noted in the register of members of the company against the record of the shares held by the trustee the fact that such an agreement exists;
- (f) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (g) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;
- (h) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
- (i) at any time prior to the expiration of any voting trust agreement as originally fixed or as last extended as provided in this sub-section, one or more beneficiaries of the trust under the voting

trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for such additional period as is stated in the written agreement; and

- (j) the voting trustee shall, prior to the expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, deposit at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.

(2) Two or more members of a company may, notwithstanding sub-section (1), by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted—

- (a) as provided by the agreement;
- (b) as the parties may agree; or
- (c) as determined in accordance with such procedure as they may agree upon.

(3) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.

Court may call meeting of members.

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

- (a) it is impracticable to call or conduct a meeting of the members of a company in the manner

specified in this Act or in the articles and by-laws of the company; or

- (b) it is in the interests of the members of the company that a meeting of members is held.

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

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

76. The Regulations may specify provisions for proceedings of members' meetings which shall apply in respect of a company, except to the extent that the articles or by-laws of the company provide otherwise.

Proceedings
at meetings of
members.

77.—(1) Subject to the articles or by-laws of a company, an action that may be taken by members of the company at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

Written
resolutions.

(2) A resolution under sub-section (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more members.

78. Any notice, information or written statement required under this Act to be given by a company to members shall be served in the case of members holding registered shares—

Service of
notice on
members.

- (a) in the manner specified in the articles or by-laws, as the case may be; or
- (b) in the absence of a provision in the articles or by-laws, by personal service or by mail addressed

to each member at the address shown in the register of members.

PART V

Company Administration

Sub-Part 1

Registered Office and Registered Agent

Registered
office.

79.—(1) A company shall, at all times, have a registered office in Belize.

(2) The registered office of a company is—

- (a) the place specified as the company's first registered office in the articles filed under section 9(1)(c); or
- (b) if one or more notices of change of registered office have been filed under section 82, the place specified in the last such notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the articles or in any notice filed under section 82—

- (a) shall be a physical address in Belize; and
- (b) if the registered office of the company is at the office of its Registered Agent, that fact shall be stated in the description of the address in the articles or in the notice.

Registered
Agent.
CAP. 272.

80.—(1) No person shall act or purport to act as a Registered Agent of a company unless the person has obtained a licence to act as a Registered Agent from the Financial Services Commission and a person who contravenes this provision

commits an offence and is liable to the penalties prescribed under the Financial Services Commission Act.

(2) Subject to sub-section (4), a company shall at all times have a Registered Agent in Belize, unless—

- (a) it is a domestic company without any foreign shareholders or directors; or
- (b) otherwise prescribed by Regulations.

(3) Unless the last Registered Agent of the company has resigned in accordance with section 84 or ceased to be the company's Registered Agent in accordance with section 85(3), the Registered Agent of a company is—

- (a) the person specified as the company's first Registered Agent in the articles filed under section 9(1)(c); or
- (b) if one or more notices of change of Registered Agent have been filed under section 82, the person specified as the company's Registered Agent in the last such notice to be registered by the Registrar.

(4) No person shall be, or agree to be, the Registered Agent of a company unless that person—

- (a) has a physical address in Belize; and
- (b) if the registered office of the company is at the office of its Registered Agent, that fact shall be stated in the description of the address in the articles or in the notice.

(5) The Registered Agent of a foreign company shall be a person who holds a relevant licence.

(6) If the Registered Agent of a foreign company ceases to hold a relevant licence, the company shall, within 14 days

of becoming aware that the person concerned has ceased to hold a relevant licence, change its Registered Agent to a person who holds such a licence.

(7) A company that contravenes sub-section (6) commits an offence and liable to an administrative fine imposed by the Commission as set out in Regulations.

(8) Subject to sub-section (9), a person who, not being the holder of a relevant licence, acts as the Registered Agent of a foreign company commits an offence.

(9) If a person who acts as the Registered Agent of a foreign company ceases to hold a relevant licence, he does not commit an offence under sub-section (6) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its Registered Agent in accordance with sub-section (4).

Registered Agent-prohibition.

81.—(1) A company that does not have a Registered Agent in contravention of section 80 commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

(2) A company that continues to contravene section 80 for a period exceeding 6 months shall be struck off the Register.

Change of registered office or Registered Agents.

82.—(1) A resolution to change the location of a company's registered office or to change a company's Registered Agent may be passed—

- (a) notwithstanding any provision to the contrary in the articles, by the members of the company; or
- (b) if authorised by the articles, by the directors of the company.

(2) A company that wishes to change its registered office or Registered Agent shall file a notice in the approved form.

(3) A notice of change of Registered Agent shall be endorsed by the new Registered Agent with his agreement to act as Registered Agent.

(4) A notice of change of registered office or Registered Agent may be filed only by—

- (a) the Registered Agent of the company; or
- (b) a legal practitioner in Belize acting on behalf of the company for the purposes of filing the notice.

(5) For the purposes of sub-section (4)(a), in the case of a notice of change of Registered Agent, “Registered Agent” means the existing Registered Agent.

(6) A change of registered office or Registered Agent takes effect on the registration by the Registrar of the notice filed under sub-section (2).

(7) As soon as reasonably practicable after registering a notice of change of Registered Agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration—

- (a) to the company’s new Registered Agent; and
- (b) where the notice was filed by a legal practitioner, to the former Registered Agent.

(8) A change of registered office or Registered Agent is deemed not to constitute an amendment of the company’s articles.

Registered
Agent ceasing
to act.

83.–(1) A person may resign as the Registered Agent of a company only in accordance with this section.

(2) A person wishing to resign as the Registered Agent of a company shall–

- (a) give not less than ninety days written notice of his intention to resign as Registered Agent of the company on the date specified in the notice to a person specified in sub-section (3); and
- (b) file a copy of the notice provided under paragraph (a) in accordance with sub-section (3).

(3) A notice under sub-section (2) shall be sent to a director of the company at the director's last known address or, if the Registered Agent is not aware of the identity of any director of the company, to the person from whom the Registered Agent last received instructions concerning the company.

(4) If a company does not change its Registered Agent in accordance with section 83 on or before the date specified in the notice given under sub-section (2), the Registered Agent may file a notice of resignation as the company's Registered Agent.

(5) Unless the company has previously changed its Registered Agent, the resignation of a Registered Agent is effective the day after the notice of resignation is registered by the Registrar.

Registered
Agent ceasing
to be eligible
to act.

84.–(1) For the purposes of this section, a person ceases to be eligible to act as a Registered Agent if–

- (a) the person ceases to hold a licence under the applicable enactment; or

- (b) the Commission withdraws its approval for the person to provide Registered Agent services.

(2) Where a person ceases to be eligible to act as a Registered Agent, that person shall, with respect to each company of which he was, immediately before ceasing to be eligible to act, the Registered Agent, shall send to the person specified in sub-section (3), a notice—

- (a) advising the company that he is no longer eligible to be its Registered Agent;
- (b) advising the company that it must appoint a new Registered Agent within ninety days of the date of the notice; and
- (c) specifying that on the expiration of the period specified in paragraph (b), he will cease to be the Registered Agent of the company, if the company has not previously changed its Registered Agent.

(3) A notice under sub-section (2) shall be sent to a director of the company at the director's last known address or, if the Registered Agent is not aware of the identity of any director of the company, to the person from whom the Registered Agent last received instructions concerning the company.

(4) A company that receives a notice under sub-section (2) shall, within ninety days of the date of the notice, appoint a new Registered Agent.

(5) A Registered Agent who contravenes sub-section (2) or a company that contravenes sub-section (4) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

(6) A person does not commit an offence under subsection (5) by reason only of the fact that—

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

Register of
Registered
Agents.

85.—(1) The Commission shall maintain a Register of Registered Agents in which the following details shall be recorded in respect of each Registered Agent—

- (a) the full name of the Registered Agent;
- (b) the current address of the Registered Agent;
- (c) the names of the individuals authorised to sign on behalf of any firm or company that is a Registered Agent;
- (d) the date when the Registered Agent obtained the approval of the Commission to provide Registered Agent services; and
- (e) in a case where a person ceases to be a Registered Agent—
 - (i) the date on which the person ceased to be so licensed; and
 - (ii) the reason for his ceasing to be a Registered Agent.

(2) The Regulations may provide for, the publication by the Commission of—

- (a) the names of persons who are, from time to time, licensed to provide Registered Agent services; and
- (b) where the Commission revokes the approval to provide Registered Agent services, the name of the person whose approval has been revoked and the reasons for such revocation.

(3) A Registered Agent shall, forthwith, send notification to the Registrar in the approved form of any change in the details kept by the Registrar in respect of the Registered Agent in the Register of Registered Agents, and the Registrar shall record the change in the Register.

(4) A Registered Agent who contravenes sub-section (3) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Sub-Part 2

Company Records

86.-(1) A company shall keep the following documents at its registered office and a copy thereof at the office of its Registered Agent in Belize if different from its registered office-

Documents
to be kept
at office of
Registered
Agent.

- (a) the articles of the company;
- (b) the register of members maintained in accordance with section 42;
- (c) the register of directors maintained under section 109;
- (d) the register of beneficial owners;
- (e) information on voting trustees, including their full names and addresses; and

- (f) copies of all notices and other documents filed by the company–
 - (i) in the case of a company, in the previous ten years; and
 - (ii) in the case of a licenced financial institution, the previous five years.

(3) Any registers required to be kept by a company shall be kept at the registered office, and upon a request made by the competent authority, the registered agent shall produce the requested registers within twenty-four hours of the date of receipt of the request.

(4) For the purpose of sub-section (3) “competent authority” means the Financial Services Commission established under the Financial Services Commission Act or other authority so designated, recognized or appointed under an enactment.

(5) A company that contravenes sub-section (1) (2) or (3) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Other records to be maintained by company.

87.–(1) A company shall keep the following records at its registered office and a copy thereof at the office of its Registered Agent in Belize if different from its registered office–

- (a) minutes of meetings and resolutions of members and of classes of members;
- (b) minutes of meetings and resolutions of directors and committees of directors; and
- (c) identification, address and other relevant information on beneficial owners maintained in accordance with section 86 (1) (d).

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

(3) Where the place at which any records specified under sub-section (1) is changed, the company shall provide the Registered Agent with the physical address of the new location of the records within fourteen days of the change of location.

(4) A company that contravenes this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

88.—(1) A company shall keep records that—

Financial records.

- (a) are sufficient to show and explain the company's transactions; and
- (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(2) If the accounting records of a company are kept outside Belize, the company shall ensure that it keeps at its registered office—

- (a) accounts and returns adequate to enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis; and
- (b) a written record of the place or places outside Belize where its accounting records are kept.

(3) The period for which all records and underlying documents shall be maintained is five years beginning on the date—

- (a) on which all activities taking place in the course of the transaction in question were completed; or
- (b) of the ending of the business relationship for whose formation the record was compiled.

(4) The records and underlying documents required to be kept under this section shall be kept at the registered office of the company, at the office of its Registered Agent or at such other place as the directors may by resolution determine.

(5) Where the records and underlying documents required to be kept under this section are kept at a place or places other than at the registered office of the company, or the office of its registered agent, the company shall provide the Registered Agent with a written—

- (a) record of the physical address of the place at which the records and underlying documents are kept;
- (b) record of the name of the person who owns or controls the place or places at which the records and underlying documents are kept; and
- (c) undertaking advising that the Registered Agent shall, at any time it so requests, have access to and be provided with the records and underlying documents without delay.

(6) Where the place or places at which the records and underlying documents, or the name of the person who owns or controls such place or places, change, the company shall provide its Registered Agent with the physical address of the new location of the records and underlying documents or the

name of the new owner or controller of the new location, as the case may be, within 14 days of the change of the place or places.

(7) The Registered Agent shall keep and maintain a record of the place or places outside Belize at which the company keeps its records and underlying documents and such record shall comprise—

- (a) the name of the company;
- (b) the address or addresses of the place or places at which the company's records and underlying documents are kept;
- (c) the name and proof of the identity of the person who owns or controls the place or places at which the company's records and underlying documents are kept; and
- (d) the date the written undertaking under subsection (5)(c) was given to the Registered Agent.

(8) Whenever required to do so by the Commission and further to the Financial Practitioners Code of Conduct Regulations, the Registered Agent shall request and obtain from the company and provide to the Director General within a period of seven days, the records and underlying documents in respect of the company.

(9) For the purposes of this section “business relationship” means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis.

(10) A company that contravenes this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Form of records.

89. The records required to be kept by a company under this Act shall be in a form that is clearly legible and easily accessible and kept in the English language or easily reproduced in the English language—

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

CAP. 229:03.

Inspection of records.

90.—(1) A director of a company is entitled, on giving reasonable notice, to inspect the documents and records of the company without charge; and at a reasonable time specified by the director, and to make copies of or take extracts from the documents and records.

(2) Subject to sub-section (3), a member of a company is entitled, on giving written notice to the company, to inspect—

- (a) the articles;
- (b) the register of members;
- (c) the register of directors; and
- (d) minutes of meetings and resolutions of members and of those classes of members of which he is a member, and to make copies of or take extracts from the documents and records.

(3) Subject to the articles, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document, or part of a document, specified in sub-section (2)(b), (c) or (d), refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

(4) The directors shall, as soon as reasonably practicable, notify a member of any exercise of their powers under sub-section (3).

(5) Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the Court for an order that he should be permitted to inspect the document or to inspect the document without limitation.

(6) On an application under sub-section (5), the Court may make such order as it considers just.

91.—(1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to—

Service of process, etc. on company.

(a) the company's registered office; or

(b) the office of the company's Registered Agent.

(2) The Regulations may provide for the methods by which service of a document on a company may be proved.

92.—(1) A company may have a common seal, but need not have one.

Common seal.

(2) A company which has a common seal shall have its name engraved in legible characters on the seal.

(3) A company that contravenes any provision of this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

93.—(1) A company shall file with the Registrar, in the time and manner prescribed by Regulations, a copy of—

Registration of registers of members, beneficial owners and directors.

(a) its register of members;

(b) its register of directors.

(2) The Commission, may, on approval of the Minister, make Regulations to prescribe the information to be contained in the register under sub-section (1) in relation to the members, beneficial owners and directors.

Sub-Part 3

General Provisions

Contracts
and smart
contracts.

94.-(1) A contract may be entered into by a company as follows—

- (a) a contract that, if entered into by an individual, would be required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may be varied or discharged in the same manner;
- (b) a contract that, if entered into by an individual, would be required by law to be in writing and signed, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and
- (c) a contract that, if entered into by an individual, would be valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

(3) Without affecting sub-section (1)(a), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

(4) Notwithstanding sub-section (1)(a) and any other enactment in Belize, an instrument is validly executed by a company as a deed or an instrument under seal if it is either—

- (a) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the articles and by-laws to witness the application of the company's seal; or
- (b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company.

(5) The provisions of sub-section (3) shall be without prejudice to the validity of any instrument under seal validly executed before, on or after the date on which this section comes into force.

(6) The provisions of sub-section (4) shall apply to a disposition of property including under the Registered Land Act.

CAP. 194.

(7) A contract may be entered into by the company by electronic means, which can be self-executing and legally enforceable upon the occurrence of specified conditions; and such contract shall have effect as if it were made under sub-section (1).

Contracts
before
incorporation.

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

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

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

(3) When a company adopts a contract under sub-section (2)—

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

Notes and bills
of exchange.

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

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

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

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

97.—(1) Subject to its articles and by-laws, a company may, by an instrument in writing, appoint a person as its attorney either generally or in relation to a specific matter.

Power of attorney.

(2) An act of an attorney appointed under sub-section (1) in accordance with the instrument under which he was appointed binds the company.

(3) An instrument appointing an attorney under sub-section (1) may either be—

- (a) executed as a deed; or
- (b) signed by a person acting under the express or implied authority of the company.

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

Authentication or attestation.

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

Company without members.

PART VI

*Directors**Sub-Part 1**Management by Directors*

Management by
directors.

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

(2) Sub-section (1) is subject to any modifications or limitations in a company's articles or by-laws.

(3) Subject to sub-section (4), a company shall, at all times, have one or more directors.

(4) Sub-section (3) does not apply during the period between the incorporation of the company and the appointment of the first directors by the Registered Agent under section 104(1).

(5) Subject to sub-section (3), the number of directors of a company may be fixed by, or in the manner provided in, the articles of the company.

(6) If at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.

Committees of
directors.

101.—(1) Subject to the articles and by-laws and to sub-section (2), the directors may—

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

and may include other members who are not directors as long as the majority of the members of the committee are directors; and

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

(2) Notwithstanding anything to the contrary in the articles or by-laws, the directors have no power to delegate the following powers to a committee of directors—

- (a) to amend the articles or by-laws;
- (b) to designate committees of directors;
- (c) to delegate powers to a committee of directors;
- (d) to appoint or remove directors;
- (e) to appoint or remove an agent;
- (f) to approve a plan or merger, consolidation or arrangement;
- (g) to make a declaration of solvency for the purposes of section 205(1)(a) or approve a liquidation plan; or
- (h) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.

(3) Sub-section (2)(b) and (c) do not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.

(4) Where the directors of a company delegate their powers to a committee of directors under sub-section (1), they remain responsible for the exercise of that power by the committee, unless they believed on reasonable grounds that at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act.

(5) The Regulations may amend sub-section (2) by adding to the powers that the directors have no power to delegate to a committee of directors.

Sub-Part 2

Appointment, Removal and Resignation of Directors

Persons
disqualified for
appointment as
director.

102.-(1) The following are disqualified for appointment as the director of a company—

- (a) an individual who is under eighteen years of age;
- (b) an undischarged bankrupt under the bankruptcy laws of any country;
- (c) a person who, in respect of a particular company, is disqualified by the articles or by-from being a director of the company; and
- (d) a person who is not fit and proper under the legislation applicable to regulated entities.

(2) A person who acts as a director of a company whilst disqualified under sub-section (1) is nevertheless deemed to be a director of the company for the purposes of any provision of this Act that imposes a duty or obligation on a director.

103. A person shall not be appointed as the director of a company, or nominated as a reserve director, unless he has consented in writing to be a director or to be nominated as a reserve director.

Consent to act
as director.

104.-(1) The first Registered Agent of a company shall, upon the date of incorporation of the company, appoint one or more persons as the first directors of the company.

Appointment
of directors.

(2) Subsequent directors of a company may be appointed—

- (a) unless the articles or by-laws provide otherwise, by the members; or
- (b) where permitted by the articles or by-laws, by the directors.

(3) A director is appointed for such term as may be specified in the resolution appointing him.

(4) Unless the articles or by-laws of a company provide otherwise, the directors of a company may appoint one or more directors to fill a vacancy on the board.

(5) For the purposes of sub-section (4)—

- (a) there is a vacancy on the board if a director dies or otherwise ceases to hold office as a director prior to the expiration of his term of office; and
- (b) the directors may not appoint a director for a term exceeding the term that remained when the person who has ceased to be a director left or otherwise ceased to hold office.

(6) A director holds office until his successor takes office or until his earlier death, resignation or removal.

(7) Where a company has only one member who is an individual and that member is also the sole director of the company, notwithstanding anything contained in the articles, that sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 102(1) as a reserve director of the company to act in the place of the sole director in the event of his death.

(8) The nomination of a person as a reserve director of the company ceases to have effect if—

- (a) before the death of the sole member or director, as the case may be, who nominated him—
 - (i) he resigns as reserve director; or
 - (ii) the sole member or director revokes the nomination in writing; or
- (b) the sole member or director who nominated him ceases to be the sole member or director of the company for any reason other than his death.

**Removal of
directors.**

105.—(1) Subject to the articles or by-laws of a company, a director of the company may be removed from office by resolution of the members of the company.

(2) Subject to the articles and by-laws, a resolution under sub-section (1) may only be passed—

- (a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
- (b) by a written resolution passed by at least seventy-five per cent of the members of the company entitled to vote.

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

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

(5) Subject to the articles and by-laws, sub-sections (2) and (3) apply to a resolution of directors passed under sub-section (4) with the substitution, in sub-section (3), of “directors” for “members”.

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

Resignation of director.

(2) A director of a company shall resign forthwith if he is, or becomes, disqualified to act as a director under section 102.

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

Liability of former directors.

108. The acts of a person as a director are valid notwithstanding that—

Validity of acts of director.

(a) the person’s appointment as a director was defective; or

(b) the person is disqualified to act as a director under section 102.

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

Register of directors.

- (a) the names and addresses of the persons who are directors of the company or who have been nominated as reserve directors of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director, or nominated as a reserve director, of the company;
- (c) the date on which each person named as a director ceased to be a director of the company;
- (d) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and
- (e) such other information as may be prescribed.

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

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

Annual return for unlimited company not authorised to issue shares.

110.—(1) An unlimited company that is not authorised to issue shares shall, on or before 30 June of each year, file an annual return in the approved form of its directors made up to 31 December of the previous year.

(2) An annual return filed under sub-section (1) shall be certified as correct by a director of the company or by its Registered Agent.

111. Subject to the articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

Emoluments of directors.

Sub-Part 3

Duties of Directors and Conflicts

112.—(1) Subject to this section, a director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company.

Duties of directors.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the articles or by-laws of the company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the articles or by-laws of the company and with the prior agreement of the shareholders, other than its holding company, act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.

(4) A director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the articles or by-laws of the company, act in a manner which he believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

Powers to be exercised for proper purpose.

113. A director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes this Act or the articles or by-laws of the company.

Standard of care.

114. A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation—

- (a) the nature of the company;
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him.

Reliance on records and reports.

115.—(1) Subject to sub-section (2), a director of a company, when exercising his powers or performing his duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by—

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; or
- (c) any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.

(2) Sub-section (1) applies only if the director—

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

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

Disclosure of interest.

(2) The Regulations may prescribe circumstances in which a director is interested in a transaction for the purposes of this section and section 117 and such circumstances may include a director's relationship with another person who will or may obtain a benefit from the transaction.

(3) A director of a company is not required to comply with sub-section (1) if—

- (a) the transaction or proposed transaction is between the director and the company; and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(4) For the purposes of sub-section (1), a disclosure to the board to the effect that a director is a member, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which

may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(5) Subject to section 117(1), the failure by a director to comply with sub-section (1) does not affect the validity of a transaction entered into by the director or the company.

(6) For the purposes of sub-section (1), a disclosure is not made to the board unless it is made or brought to the attention of every director on the board.

(7) A director who contravenes sub-section (1) commits an offence and is liable on indictment to a fine of one-hundred thousand dollars.

Avoidance by company of transactions in which director is interested.

117.—(1) Subject to this section, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was—

- (a) disclosed to the board in accordance with section 116 prior to the company entering into the transaction; or
- (b) not required to be disclosed by virtue of section 116.

(2) Notwithstanding sub-section (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if—

- (a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or
- (b) the company received fair value for the transaction.

(3) For the purposes of sub-section (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.

(4) Subject to the articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may—

- (a) vote on a matter relating to the transaction;
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
- (c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.

(5) The avoidance of a transaction under sub-section (1) does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

- (a) from a person other than the company (“the transferor”);
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

*Sub-Part 4**Proceedings of Directors and Miscellaneous Provisions*

Meetings of
directors.

118.-(1) Subject to the articles or by-laws of a company, the directors of a company may meet at such times and in such manner and places within or outside Belize as they may determine to be necessary or desirable.

(2) Subject to the articles and by-laws, any one or more directors may convene a meeting of directors.

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

- (a) he participates by telephone or any electronic audio or audio visual means; and
- (b) all directors participating in the meeting are able to hear each other.

Notice of
meetings of
directors.

119.-(1) Subject to any requirements as to notice in the articles or by-laws, a director shall be given not less than one day's notice of a meeting of directors.

(2) Notwithstanding sub-section (1), subject to the articles or by-laws, a meeting of directors held in contravention of that sub-section is valid if all of the directors, or such majority thereof as may be specified in the articles or by-laws entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

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

120. The quorum for a meeting of directors is that fixed by the articles or by-laws but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.

Quorum for meetings of directors.

121.-(1) Subject to the articles or by-laws, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing including any electronic communication.

Consents of directors.

(2) A resolution under sub-section (1) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors.

(3) Notwithstanding sub-sections (1) and (2), Regulations may prescribe alternative means of the communication in relation to recording the consent of directors under this section.

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

Alternates for directors.

(2) An alternate for a director appointed under sub-section (1) is entitled to attend meetings in the absence of the director who appointed him and to vote in the place of the director.

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

Agents.

(2) Subject to the articles or by-laws of a company, an agent of the company has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the articles

or in the resolution of directors appointing the agent, except that no agent has any power or authority with respect to the following—

- (a) to amend the articles or by-laws;
- (b) to change the registered office or agent;
- (c) to designate committees of directors;
- (d) to delegate powers to a committee of directors;
- (e) to appoint or remove directors;
- (f) to appoint or remove an agent;
- (g) to fix emoluments of directors;
- (h) to approve a plan of merger, consolidation or arrangement;
- (i) to make a declaration of solvency for the purposes of section 205(1)(a) or to approve a liquidation plan;
- (j) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or
- (k) to authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Belize.

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

(4) The directors may remove an agent, appointed under sub-section (1) and may revoke or vary a power conferred on him under sub-section (2).

124.-(1) Subject to sub-section (2) and its articles or by-laws, a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who—

Indemnification.

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

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

(3) For the purposes of sub-section (2), a director acts in the best interests of the company if he acts in the best interests of—

- (a) the company's holding company; or
- (b) a shareholder or shareholders of the company,

in either case, in the circumstances specified in section 112(2), (3) or (4), as the case may be.

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

(5) Expenses, including legal fees, incurred by a director or officer in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director to repay the amount if it shall ultimately be determined that the director or officer is not entitled to be indemnified by the company in accordance with sub-section (1).

(6) Expenses, including legal fees, incurred by a former director or former officer in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the former director to repay the amount if it shall ultimately be determined that the former director is not entitled to be indemnified by the company in accordance with sub-section (1) and upon such other terms and conditions, if any, as the company deems appropriate.

(7) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a director or officer of the company.

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

(9) A company shall not indemnify a person in breach of sub-section (2) and any indemnity given in breach of that section is void and of no effect.

125. A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 124.

Insurance.

PART VII

Private Trust Companies

126. For the purposes of this section—

Interpretation
for this Part.

“connected trust business” means trust business in respect of trusts of which there is one or more than one contributor to the funds of which are all, in relation to each other, connected persons; and a person is a “connected person”, in relation to another person, where—

- (a) they are in a relationship prescribed by Regulations made under this Part;
- (b) one is contributing to the funds of a trust as the trustee of a trust of which the other is a contributor;

- (c) each is in a group of companies; or
- (d) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies;

“private trust company” means a trust company which—

- (a) is incorporated in Belize; and
- (b) conducts no trust business other than connected trust business or unremunerated trust business; and

“unremunerated trust business” requires that—

- (a) payments made to the private trust company are only in respect of costs and expenses incurred in acting as trustee (or protector) of a trust, where the private trust company is not permitted to make a profit;
- (b) only “professional directors” are remunerated for providing director services and such directors may not own shares in the private trust company; and
- (c) no person “associated” with the private trust company is remunerated in consideration of services provided by the private trust company which constitute “related trust business” and “associated” means that the person has a legal or beneficial interest in the private trust company, is a director or former director of the private trust company (excluding professional directors) or is an employee or former employee of the private trust company.

127. A private trust company does not require a license hereunder, under the Financial Services Commission Act and Regulations made thereunder or otherwise to carry on connected trust business or unremunerated trust business.

No requirement for licence for private trust companies.

128. Regulations may prescribe matters, information, particulars, and requirements for the registering and maintenance of private trust companies.

Regulations to prescribe matters for private trust companies.

PART VIII

Segregated Portfolio Companies

129.—(1) In this Part—

Interpretation for this Part.

“general assets” of a segregated portfolio company has the meaning specified in section 138(3);

“portfolio liquidator” means the person appointed as portfolio liquidator under a Portfolio Liquidation Order;

“Portfolio Liquidation Order” means an order made under section 147;

“segregated portfolio” means a segregated portfolio created by a segregated portfolio company under section 130 for the purpose of segregating the assets and liabilities of the company in accordance with this Part;

“segregated portfolio assets” has the meaning specified in section 138(2); and

“segregated portfolio distribution” means a distribution made in respect of segregated portfolio shares and “segregated portfolio dividend” shall be construed accordingly.

(2) This Act applies to a segregated portfolio company subject to the provisions of this Part and to such modifications as are necessary.

Sub-Part 1

Approval and Registration

Incorporation or registration as segregated portfolio company.

130.–(1) A company limited by shares may, with the written approval of the Commission given under sub-section (2)–

- (a) be incorporated as a segregated portfolio company; or
- (b) if it has already been incorporated, be registered by the Registrar as a segregated portfolio company.

(2) The Commission may give its written approval to the incorporation of a company, or the registration of an existing company, as a segregated portfolio company only if the company–

- (a) is, or on its incorporation will be, recognised as a professional or private fund or registered as a public fund under the Securities Industry Act;
- (b) is, or on its incorporation will be, registered as an international insurance company under the International Insurance Act; or
- (c) is, or on its incorporation will be, of such class or description as may be prescribed.

(3) The Registrar shall not incorporate or register a company as a segregated portfolio company unless the Commission has given its written approval under sub-section (1).

Act No. 46 of 2021.

Application for approval of Commission.

131.–(1) An application for approval to incorporate or register a company as a segregated portfolio company shall be made

to the Commission in the approved form and shall be accompanied by such documentation as may be prescribed or notified by the Registrar.

(2) The Commission may require an applicant under sub-section (1) to file his application with such other documentation and information as it considers necessary to determine the application.

132.-(1) On receipt of an application under section 131, if it is satisfied that the company has, or has available to it, the knowledge and expertise necessary for the proper management of segregated portfolios, the Commission may give its approval to the incorporation or registration of a company as a segregated portfolio company subject to such conditions as it considers appropriate.

Commission
may approve
application.

(2) The Commission may, at any time—

- (a) vary or revoke any condition subject to which an approval under sub-section (1) was given; and
- (b) impose any condition in respect of any such approval.

Sub-Part 2

Attributes and Requirements of Segregated Portfolio Companies

133.-(1) Subject to sub-section (4), a segregated portfolio company may create one or more segregated portfolios for the purpose of segregating the assets and liabilities of the company held within, or on behalf, of a segregated portfolio from the assets and liabilities of the company held within, or on behalf of, any other segregated portfolio of the company or the assets and liabilities of the company which are not

Segregated
portfolios.

held within, or on behalf of, any segregated portfolio of the company.

(2) A segregated portfolio company is a single legal entity and a segregated portfolio of or within a segregated portfolio company does not constitute a legal entity separate from the company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio”.

(4) Where pursuant to the Regulations made under this Act, a segregated portfolio company is required to obtain the approval of the Commission, or the Supervisor of Insurance, for the creation of a segregated portfolio, the company shall not create a segregated portfolio unless it has obtained the prior written approval of the Commission.

(5) A segregated portfolio company that contravenes sub-section (4) commits an offence and is liable on indictment to a fine of one-hundred thousand dollars.

Segregated
portfolio
shares.

134.—(1) A segregated portfolio company may, in respect of a segregated portfolio, issue shares, the proceeds of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) Segregated portfolio shares may be issued in one or more classes and a class of segregated portfolio shares may be issued in one or more series.

(3) Notwithstanding section 9(1)(e), the articles of a segregated portfolio company is not required to state the classes of segregated portfolio shares that a segregated portfolio company is authorised to issue.

(4) Unless the context otherwise requires, references in Part III to shares include references to segregated portfolio shares.

135. The proceeds of the issue of shares in a segregated portfolio company, other than segregated portfolio shares, shall be included in the company's general assets.

General shares.

136.-(1) Subject to this section, a segregated portfolio company may pay a dividend or otherwise make a distribution in respect of segregated portfolio shares.

Segregated portfolio distributions and dividends.

(2) Segregated portfolio dividends may be paid, and segregated portfolio distributions made, by reference only to the segregated portfolio assets and liabilities attributable to the segregated portfolio in respect of which the segregated portfolio shares were issued.

(3) In determining whether a segregated portfolio company satisfies the solvency test for the purposes of section 58, in respect of a segregated portfolio distribution, no account shall be taken of—

(a) the assets and liabilities of or attributable to any other segregated portfolio of the company;
or

(b) the company's general assets and liabilities.

(4) The Regulations may prescribe restrictions on the power of a segregated portfolio company to make distributions, including segregated portfolio distributions, where the company or any segregated portfolio of or within the company does not satisfy the solvency test.

137. Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on, or to ensure to the benefit of, a segregated portfolio or portfolios shall be executed by the segregated

Company to act on behalf of portfolios.

portfolio company for, and on behalf of, such segregated portfolio or portfolios which shall be identified or specified and, where in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

Assets.

138.—(1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise—

(a) assets representing the consideration paid or payable for the issue of segregated portfolio shares and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to, or held within, the segregated portfolio.

(5) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures—

(a) to segregate, and keep segregated, segregated portfolio assets separate and separately identifiable from general assets;

(b) to segregate, and keep segregated, segregated portfolio assets of each segregated portfolio

separate and separately identifiable from segregated portfolio assets of any other segregated portfolio.

(6) Notwithstanding sub-section (5), the directors of a segregated portfolio company may cause or permit segregated portfolio assets and general assets to be held—

- (a) by or through a nominee; or
- (b) by a company, the shares and capital interests of which may be segregated portfolio assets or general assets or a combination of both.

(7) The directors of a segregated portfolio company do not breach the duties imposed on them under sub-section (5) by reason only that they cause or permit segregated portfolio assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with sub-section (5).

139.—(1) The rights of creditors of a segregated portfolio company shall correspond with the liabilities provided for in section 142 and no creditor of a segregated portfolio company shall have any rights other than the rights specified in this section and in sections 155 and 156.

Creditors of a segregated portfolio company.

(2) Subject to sub-section (3), the following terms shall be implied in every transaction entered into by a segregated portfolio company—

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio;

- (b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, 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 segregated portfolio assets attributable to any segregated portfolio of the company in respect of a liability not attributable to that segregated portfolio, 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.

(3) Sub-section (2) does not apply to the extent that it is excluded in writing.

(4) All sums recovered by a segregated portfolio company as a result of any trust referred to in sub-section (2) (c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in sub-section (2)(b).

(5) Any asset or sum recovered by a segregated portfolio company pursuant to the implied term set out in sub-section (2) (b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in those sub-sections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated portfolio affected.

(6) In the event of any segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio

company being taken in execution in respect of a liability not attributable to that segregated portfolio, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated portfolio affected, the company shall—

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated portfolio affected; and
- (b) transfer or pay, from the segregated portfolio assets or general assets to which the liability was attributable to the segregated portfolio affected, assets or sums sufficient to restore to the segregated portfolio affected the value of the assets lost.

(7) Where under sub-section (6)(b) a segregated portfolio company is obliged to make a transfer or payment from segregated portfolio assets attributable to a segregated portfolio of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.

(8) This section shall have extra-territorial application.

140. Segregated portfolio assets—

- (a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

Segregation of
assets.

- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities.

141.—(1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio—

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to—
 - (i) firstly the segregated portfolio assets attributable to such segregated portfolio;
 - (ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by the Commission; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person—

- (a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios; or
- (b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios,

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

142.—(1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

General liabilities and assets.

(2) Income, receipts and other assets or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

143. The financial statements of a segregated portfolio company shall take into account the segregated nature of the company and shall include an explanation of—

Financial statements.

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and
- (c) the effect that any existing deficit in the assets of one or more segregated portfolios of the

company has on the general assets of the company.

Limitation
on transfer
of segregated
portfolio assets
from segregated
portfolio
company.

144.—(1) The segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company may only be transferred to another person in accordance with, or as permitted by, this section.

(2) A transfer, pursuant to sub-section (1), of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company shall not, of itself, entitle creditors of that company to have recourse to the assets of the person to whom the segregated portfolio assets were transferred.

(3) Subject to sub-sections (8) and (9), no transfer of the segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section.

(4) The Court shall not make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company—

(a) unless it is satisfied—

(i) that the creditors of the company entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio consent to the transfer; or

(ii) that those creditors would not be unfairly prejudiced by the transfer; and

(b) without hearing the representations of the Commission on the matter.

(5) The Court, on hearing an application for a segregated portfolio transfer order, may—

- (a) make an interim order or adjourn the hearing, conditionally or unconditionally; or
- (b) dispense with any of the requirements of sub-section (4)(a).

(6) The Court may attach such conditions as it thinks fit to a segregated portfolio transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the segregated portfolio assets attributable to the segregated portfolio in relation to which the order is sought.

(7) The Court may make a segregated portfolio transfer order in relation to a segregated portfolio of a segregated portfolio company notwithstanding that—

- (a) a voluntary liquidator has been appointed in respect of the company; or
- (b) a Portfolio Liquidation Order has been made in respect of the segregated portfolio or any other segregated portfolio of the company.

(8) The provisions of this section are without prejudice to any power of a segregated portfolio company lawfully to make payments or transfers from the segregated portfolio assets attributable to any segregated portfolio of the company to a person entitled, in conformity with the provisions of this Act, to have recourse to those segregated portfolio assets.

(9) Notwithstanding the provisions of this section, a segregated portfolio company shall not require a segregated portfolio transfer order to invest, and change investment of, segregated portfolio assets or otherwise to make payments or transfers from segregated portfolio assets in the ordinary course of the company's business.

(10) Section 162 shall not apply to a transfer of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company made in compliance with this section.

Sub-Part 3

Liquidation, Portfolio Liquidation Orders and Administration

Meaning of “liquidator.”

145. In this Part, “liquidator” means a voluntary liquidator or a liquidator appointed under a liquidation order.

Liquidation of segregated portfolio company.

146. Notwithstanding the provisions of Part XV, or any other statutory provision or rule of law to the contrary, in the liquidation of a segregated portfolio company, the liquidator—

- (a) shall be bound to deal with the company’s assets in accordance with the requirements set out in section 142(5); and
- (b) in discharge of the claims of creditors of the segregated portfolio company shall apply the company’s assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

Portfolio Liquidation Orders.

147.—(1) Subject to the provisions of this section, if in relation to a segregated portfolio company the Court is satisfied—

- (a) that the segregated portfolio assets attributable to a particular segregate portfolio of the company, when account is taken of the company’s general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company’s general assets, are or are likely

to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make a Portfolio Liquidation Order under this section in respect of that segregated portfolio.

(2) A Portfolio Liquidation Order may be made in respect of one or more segregated portfolios.

(3) A Portfolio Liquidation Order is an order directing that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a portfolio liquidator specified in the order for the purposes of—

- (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
- (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) Where the Court makes a Portfolio Liquidation Order it shall, at the same time, appoint a qualified insolvency practitioner to act as portfolio liquidator under the Portfolio Liquidation Order.

(5) A Portfolio Liquidation Order—

- (a) shall not be made if a liquidator is appointed in respect of the segregated portfolio company; and

(b) shall cease to be of effect upon the appointment of a liquidator in respect of the segregated portfolio company, but without prejudice to the prior acts of the portfolio liquidator or his agents.

(6) The members of a segregated portfolio company shall not pass a resolution to appoint a liquidator of the company under Part XV if any segregated portfolio is subject to a Portfolio Liquidation Order without the prior leave of the Court.

(7) Any resolution passed contrary to sub-section (6) shall be void and of no effect.

Application
for Portfolio
Liquidation
Order.

148.—(1) An application for a Portfolio Liquidation Order in respect of a segregated portfolio of a segregated portfolio company may be made by—

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Commission.

(2) Notice of an application to the Court for a Portfolio Liquidation Order in respect of a segregated portfolio of a segregated portfolio company shall be served upon—

- (a) the company;
- (b) the Commission; and

- (c) such other persons, if any, as the Court may direct,

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

(3) The Court, on hearing an application—

- (a) for a Portfolio Liquidation Order, or
- (b) for leave, pursuant to section 147(7), to pass a resolution appointing a liquidator,

may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

(4) The Court may make a Portfolio Liquidation Order subject to such terms and conditions as it considers appropriate.

149.—(1) The portfolio liquidator of a portfolio of a segregated portfolio company—

Conduct of
portfolio
liquidation.

- (a) may do all such things as may be necessary for the purposes set out in section 161(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of, or attributable to, the segregated portfolio.

(2) The portfolio liquidator 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 Portfolio Liquidation Order to be discharged or varied; or

- (c) for an order as to any matter arising in the course of the liquidation of the portfolio.

(3) In exercising his functions and powers the portfolio liquidator shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the portfolio liquidator in good faith is not concerned to inquire whether the portfolio liquidator is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a Portfolio Liquidation Order—

- (a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the Portfolio Liquidation Order was made; and
- (b) for the Portfolio Liquidation Order to be discharged or varied; or
- (c) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio in respect of which the Portfolio Liquidation Order was made,

except by leave of the Court, which may be conditional or unconditional.

(6) During the period of operation of a Portfolio Liquidation Order—

- (a) the powers, functions and duties of the directors in respect of the business of, or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made continue to the extent specified in this Part or in Regulations made under section 168 or to the extent that the portfolio liquidator or the Court shall direct; and
- (b) the portfolio liquidator of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

150.—(1) Subject to sub-section (2) and to any agreement between the segregated portfolio company and any creditor of the company as to the subordination of the debts due to that creditor or to the debts due to the company's other creditors, the portfolio liquidator of a segregated portfolio shall, in the winding up of the business of that segregated portfolio, apply the segregated portfolio assets in satisfaction of the company's liabilities attributable to that segregated portfolio *pari passu*.

Distribution
of segregated
portfolio assets.

(2) Creditors of a segregated portfolio that is subject to a Portfolio Liquidation Order shall be regarded as preferential creditors of the segregated portfolio to the extent that they would be preferential creditors if—

- (a) the segregated portfolio was a company; and
- (b) the portfolio liquidator was a liquidator appointed under a liquidation order.

(3) Subject to the articles or by-laws, any surplus shall be distributed among the holders of the segregated portfolio shares or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the company.

(4) Where there are no segregated portfolio shares and no persons otherwise entitled to the surplus, any surplus shall be paid to the segregated portfolio company and shall become a general asset of the company.

(5) Notwithstanding sub-section (2), where the company is an insurance company, preference should be given to the policyholders of the insurance company before regular creditors, particularly where it relates to life insurance and unpaid legitimate insurance claims.

Discharge
and variation
of Portfolio
Liquidation
Orders.

151.—(1) The Court shall not discharge a Portfolio Liquidation 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) Subject to sub-section (1), the Court, on hearing an application for the discharge or variation of a Portfolio Liquidation Order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a Portfolio Liquidation Order in respect of a segregated portfolio 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 portfolio liquidator to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

(4) Nothing in sub-section (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 segregated portfolio company.

(5) The Court may, upon discharging a Portfolio Liquidation Order in respect of a segregated portfolio of a segregated portfolio company, direct that the segregated portfolio shall be dissolved on such date as the Court may specify.

(6) When a segregated portfolio of a segregated portfolio company has been dissolved under sub-section (5), the company may not undertake business or incur liabilities in respect of that segregated portfolio.

152. The remuneration of a portfolio liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from—

**Remuneration
of portfolio
liquidator.**

- (a) the segregated portfolio assets attributable to the segregated portfolio in respect of which the portfolio liquidator was appointed; and
- (b) to the extent that these may be insufficient, from the general assets of the company,

but not from any of the segregated portfolio assets attributable to any other segregated portfolio.

Sub-Part 4

General Provision

153.—(1) The Commission may, with the approval of the Minister, make Regulations concerning segregated portfolio companies.

Regulations.

(2) Where the segregated portfolio company is used for insurance purposes, the Commission shall also consult the Supervisor of Insurance prior to making regulations under sub-section (1).

**Provisions in
Regulations.**

154.—(1) Without limiting section 167, Regulations made under that section may—

- (a) provide that the provisions of this Act shall apply in relation to any class or description of company specified by or prescribed under section 130(2)(c) subject to such exceptions, adaptations and modifications as may be specified in the Regulations;
- (b) make provision in respect of any of the following matters—
 - (i) the classes or descriptions of segregated portfolio company which shall obtain the approval of the Commission for the creation of segregated portfolios, or circumstances in which such approval is required to be obtained;
 - (ii) where the Commission's approval is required for the creation of segregated portfolios under sub-paragraph (i), the procedure for the application for, and the granting of, the Commission's approval;
 - (iii) the conduct of the business of segregated portfolio companies;
 - (iv) the manner in which segregated portfolio companies may carry on, or hold themselves out as carrying on, business;

- (v) the form and content of the financial statements of segregated portfolio companies and the audit requirements applicable with respect to such financial statements;
 - (vi) the portfolio liquidation of segregated portfolios under Sub-Part 3; and
 - (vii) the fees payable by segregated portfolio companies and by applicants for an approval under section 131;
- (c) provide for modifications to the Insolvency Act necessary to apply that Act to the liquidation and administration of segregated portfolios and of segregated portfolio companies;
- (d) generally give effect to this Part; and
- (e) provide for the fees and penalties payable by segregated portfolio companies which may be in addition to, or in substitution for, the fees and penalties specified in Schedule I.

Schedule I.

(2) Regulations made under section 153 may make different provision in relation to different persons, circumstances or cases.

PART IX

Registration of Charges

155.—(1) In this Part—

Interpretation
of this Part.

“charge” means any form of security interest over assets, wherever situated, other than an interest arising by operation of law;

“commencement date” means the date of the coming into force of this Part;

“liability” includes contingent and prospective liabilities;

“property” includes future property; and

“relevant charge” means a charge created on or after the commencement date.

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

Creation of charges by a company.

156.—(1) Subject to its articles and by-laws, a company may, by an instrument in writing, create a charge over its property.

(2) The governing law of a charge created by a company may be the law of such jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent, and in accordance with, the requirements of the governing law.

(3) Where a company acquires property subject to a charge—

(a) sub-section (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

(b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately

before the acquisition by the company of the property subject to the charge.

157.-(1) A company shall keep a register of all relevant charges created by the company showing—

Company to keep register of charges.

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property directly or indirectly acquired by the company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;
- (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee; and
- (e) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.

(2) The register of charges shall be kept at the registered office of the company and a copy thereof at the office of its Registered Agent if different than its registered office.

(3) A company that contravenes this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

158.-(1) Where a company creates a relevant charge, an application to the Registrar to register the charge may be made by—

Registration of charges.

- (a) the company, or a person authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on his behalf.

(2) An application to the Registrar under sub-section (1) shall specify the particulars of the charge, in the approved form.

(3) The Registrar shall keep, with respect to each company, a Register of Charges containing such information as may be prescribed.

(4) If he is satisfied that the requirements of this Part as to registration have been complied with, upon receipt of an application under sub-section (2), the Registrar shall forthwith—

- (a) register the charge in the Register of Charges kept by him for that company; and
- (b) issue a certificate of registration of the charge and send a copy to the company and to the chargee.

(5) The Registrar shall state in the Register of Charges and on the certificate of registration the date and time on which a charge was registered.

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

159.—(1) Where there is a variation in the terms of a charge registered under section 158, application for the variation to be registered may be made by—

- (a) the company, or a person authorised to act on its behalf; or
- (b) the chargee, or a person authorised to act on his behalf.

(2) An application under sub-section (1) is made by filing an application in the approved form.

(3) Upon receipt of an application complying with sub-section (2), the Registrar shall forthwith—

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

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

(5) A certificate issued under sub-section (3) is conclusive proof that the variation referred to in the certificate was registered on the date and time stated in the certificate.

160.—(1) Where a charge registered under section 158 ceases to affect the property of a company, the company shall file a notice specifying the property that has ceased to be affected by the charge in the approved form.

Charge ceasing to affect company's property.

(2) A notice filed under sub-section (1) shall be signed by or on behalf of the chargee.

(3) If he is satisfied that a notice filed under sub-section (1) is correctly completed and has been signed in accordance with sub-section (2), the Registrar shall forthwith—

- (a) register the notice; and

- (b) issue a certificate and send a copy of the certificate to the company and to the chargee.

(4) The Registrar shall state in the Register of Charges and on the certificate issued under sub-section (3) the date and time on which the notice filed under sub-section (1) was registered.

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

Priority of relevant charges.

161.—(1) A relevant charge on property of a company that is registered in accordance with section 172 has priority over—

- (a) a relevant charge on the property that is subsequently registered in accordance with section 158; and
- (b) a relevant charge on the property that is not registered in accordance with section 158.

(2) Charges created on or after the commencement date which are not registered shall rank among themselves in the order in which they would have ranked had this section not come into force.

Priority of other charges.

162. Charges created prior to the commencement date shall continue to rank in the order in which they would have ranked had section 161 not come into force and, where they would have taken priority over a charge created on or after the commencement date, they shall continue to take such priority after the commencement date.

Exceptions to sections 161 and 162.

163. Notwithstanding sections 161 and 162—

- (a) the order of priorities of charges is subject to—

- (i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or
 - (ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

PART X

Merger, Consolidation, Sale of Assets, Forced Redemptions, Arrangements and Dissenters

164. In his Part—

**Interpretation
for purposes of
this Part.**

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

“consolidation” means the consolidating of two or more constituent companies into a new company;

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

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least ninety per cent of the outstanding shares of each class of shares in another company; and

“surviving company” means the constituent company into which one or more other constituent companies are merged.

Approval of
merger and
consolidation.

165.—(1) Two or more companies may merge or consolidate in accordance with this section.

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

- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
- (b) with respect to each constituent company—
 - (i) the designation and number of outstanding shares of each class of shares, specifying each such class entitled to vote on the merger or consolidation; and
 - (ii) a specification of each such class, if any, entitled to vote as a class;
- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination thereof; and

- (d) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company to be brought about by the merger.

(3) In the case of a consolidation, the plan of consolidation shall have annexed to it articles and by-laws complying with Part II, Sub-Part 2, to be adopted by the consolidated company.

(4) Some or all shares of the same class of shares in each constituent company may be converted into a particular or mixed kind of assets and other shares of the class, or all shares of other classes of shares, may be converted into other assets.

(5) The following apply in respect of a merger or consolidation under this section—

- (a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of every class of shares that are entitled to vote on the merger or consolidation as a class if the articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class to vote on the proposed amendment as a class;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or

consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

(6) This section does not apply to a special purpose company which shall follow the procedure in relation to mergers and acquisitions as prescribed by Regulations.

Registration
of merger and
consolidation.

166.—(1) After approval of the plan of merger or consolidation by the directors and members of each surviving company, articles of merger or consolidation shall be executed by each company containing—

- (a) the plan of merger or consolidation;
- (b) the date on which the articles and by-laws of each surviving company were registered by the Registrar; and
- (c) the manner in which the merger or consolidation was authorised with respect to each surviving company.

(2) The articles of merger or consolidation shall be filed with the Registrar together with—

- (a) in the case of a merger, any resolution to amend the articles and by-laws of the surviving company; and
- (b) in the case of a consolidation, articles and by-laws for the consolidated company complying with Part III, Sub-Part 2.

(3) If he is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with section 17 and, if appropriate, sections

19 and 20 and is a name under which the company could be registered under section 18, the Registrar shall—

(a) register—

(i) the articles of merger or consolidation;
and

(ii) in the case of a merger, any amendment to the articles or by-laws of the surviving company or, in the case of a consolidation, the articles and by-laws of the consolidated company; and

(b) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.

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

167.—(1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any company, in accordance with this section.

Merger with
subsidiary.

(2) The directors of the parent company shall approve a written plan of merger containing—

(a) the name of each constituent company and the name of the surviving company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares; and

- (ii) the number of shares of each class of shares in each subsidiary company owned by the parent company;
- (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and
- (d) a statement of any amendment to the articles or by-laws of the surviving company to be brought about by the merger.

(3) Some or all shares of the same class of shares in each company to be merged may be converted into assets of a particular or mixed kind and other shares of the class, or all shares of other classes of shares, may be converted into other assets; but, if the parent company is not the surviving company, shares of each class of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain—

- (a) the plan of merger;
- (b) the date on which the articles and by-laws of each constituent company were registered by the Registrar; and

- (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to, or waived by, the members of each subsidiary company.

(6) The articles of merger shall be filed with the Registrar together with any resolution to amend the articles and by-laws of the surviving company.

(7) If he is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with section 17 and, if appropriate, sections 19 and 20 and is a name under which the company could be registered under section 18, the Registrar shall—

- (a) register—
 - (i) the articles of merger; and
 - (ii) any amendment to the articles or by-laws of the surviving company; and
- (b) issue a certificate of merger in the approved form.

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

168.—(1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation.

Effect of
merger with
consolidation.

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

- (a) the surviving company or the consolidated company in so far as is consistent with its articles and by-laws, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
 - (b) in the case of a merger, the articles and by-laws of the surviving company are automatically amended to the extent, if any, that changes in its articles and by-laws are contained in the articles of merger;
 - (c) in the case of a consolidation, the articles and by-laws filed with the articles of consolidation are the articles and by-laws of the consolidated company;
 - (d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs—
- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

169.—(1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Belize in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Belize are incorporated.

Merger or consolidation with foreign company.

(2) The following apply in respect of a merger or consolidation under this section—

- (a) a company shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, and a company incorporated under the laws of a jurisdiction outside Belize shall comply with the laws of that jurisdiction; and
- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Belize, it shall file—
 - (i) an agreement that a service of process may be effected on it in Belize in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company that is a company registered under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company that is a company registered under this Act against the surviving company or the consolidated company;
 - (ii) an irrevocable appointment of its Registered Agent as its agent to accept service of process in proceedings referred to in sub-paragraph (i);
 - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company that is a company registered under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and

- (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 165 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Belize, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 179 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is a company incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside Belize, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

170. Subject to the articles or by-laws of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement thereof, of more than fifty per cent in value of the assets of the company, other than a transfer pursuant to the power described in section 28(3), if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

Disposition of assets.

- (a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;
- (b) upon approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;
- (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption
of minority
shares.

171.-(1) Subject to the articles or by-laws of a company—

- (a) members of the company holding seventy five per cent of the votes of the outstanding shares entitled to vote; and
- (b) members of the company holding ninety per cent of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

(2) Upon receipt of the written instruction referred to in sub-section (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

(3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

172.-(1) In this section, “arrangement” means—

Arrangements.

- (a) a reorganisation or reconstruction of a company;
- (b) a separation of two or more businesses carried on by a company;
- (c) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;
- (d) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
- (e) a dissolution of a company; and
- (f) any combination of any of the things specified in paragraph (a) to (e).

(2) If the directors of a company determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may approve a plan of arrangement that contains details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.

(4) The Court may, upon an application made to it under sub-section (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of twenty-one days immediately following the date of the order, and in making the order the Court may—

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 188;
- (d) conduct a hearing and permit any interested person to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall—

- (a) give notice to the persons to whom the order of the Court requires notice to be given; and
- (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain—

- (a) the plan of arrangement;
- (b) the order of the Court approving the plan of arrangement; and
- (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.

(8) The articles of arrangement shall be filed with the Registrar who shall register them.

(9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate in the approved form certifying that the articles of arrangement have been registered.

(10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of arrangement.

173. The voluntary liquidator of a company may approve a plan of arrangement under section 172 in which case, that section applies as if “voluntary liquidator” was substituted for “directors” and subject to such other modifications as are appropriate.

Arrangement
where
company is
in voluntary
liquidation.

Rights of
dissenters.

174.-(1) A member of a company is entitled to payment of the fair value of his shares upon dissenting from—

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than fifty per cent in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—
 - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter;
 - (ii) disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
 - (iii) a transfer pursuant to the power described in section 28(3);
- (d) a redemption of his shares by the company pursuant to section 171; and
- (e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under sub-section (1) shall give to the company, before the meeting of members at which the action is submitted to a

vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

(3) An objection under sub-section (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

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

(5) A member to whom the company was required to give notice who elects to dissent shall, within twenty days immediately following the date on which the notice referred to in sub-section (4) is given, give to the company a written notice of his decision to elect to dissent, stating—

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

and a member who elects to dissent from a merger under section 167 shall give to the company a written notice of his decision to elect to dissent within twenty days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 167.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within thirty days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of thirty days referred to in sub-section (8), to agree on the price to be paid for the shares owned by the member, within twenty days immediately following the date on which the period of thirty days expires, the following shall apply—

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraisers together shall designate an appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the

date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

- (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to sub-section (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only sub-sections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 171 and in such case the written offer to be made to the dissenting member pursuant to sub-section (8) shall be made within seven days immediately following the direction given to a company pursuant to section 171 to redeem its shares.

175.—(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in sub-section (2), order a meeting of the creditors or class

Schemes of
arrangement.

of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) An application under sub-section (1) may be made by—

- (a) the company;
- (b) a creditor of the company;
- (c) a member of the company;
- (d) if the company is in voluntary liquidation, by the voluntary liquidator; or
- (e) if a liquidation order has been issued, by the liquidator.

(3) If a majority in number representing seventy five per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company or, in the case of a company in voluntary liquidation or in liquidation under a liquidation order, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under sub-section (3) shall have no effect until a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under sub-section (3) shall be annexed to every copy of the company's articles issued after the order has been made.

(6) The Regulations may provide for the information and explanations to be contained in, or to accompany, a notice calling a meeting under this section.

(7) Where the Court makes an order with respect to a company under this section, sections 164 to 174 shall not apply to the company.

(8) A company that contravenes sub-section (5) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

PART XI

Continuation

176.—(1) Subject to sub-section (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction, including Belize.

Foreign
company may
continue under
this Act.

(2) A foreign company may not continue as a company incorporated under this Act if—

- (a) it is in liquidation, or subject to equivalent insolvency proceedings, in another jurisdiction;
- (b) a receiver or manager has been appointed in relation to any of its assets;
- (c) it has entered into an arrangement with its creditors, that has not been concluded; or
- (d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

Application to
continue under
this Act.

177.-(1) An application by a foreign company to continue under this Act shall be made by filing—

- (a) a certified copy of its certificate of incorporation, or such other document as evidences its incorporation, registration or formation;
- (b) its articles and by-laws complying with sub-sections (2) and (3);
- (c) evidence satisfactory to the Registrar that the application to continue and the proposed articles and by-laws have been approved—
 - (i) by a majority of the directors or the other persons who are charged with exercising the powers of the company; or
 - (ii) in such other manner as may be established by the company for exercising the powers of the company; and
- (d) evidence satisfactory to the Registrar that the company is not disqualified from continuing in Belize under this Act.

(2) Subject to sub-section (3), the articles of a company continuing under this Act shall comply with section 9.

(3) The articles of a company applying to continue under this Act—

- (a) shall, in addition to the matters required to be stated under sub-section (1), state—

- (i) the name of the company at the date of the application and the name under which it proposes to be continued;
 - (ii) the jurisdiction under which it is incorporated, registered or formed; and
 - (iii) the date on which it was incorporated, registered or formed; and
- (b) shall state the matters specified in sub-section (2).

(4) The articles and by-laws of a company applying to continue under this Act shall be signed by, or on behalf of, the persons who have approved them under sub-section (1) (c).

178.-(1) If he is satisfied that the requirements of this Act in respect of continuation have been complied with, upon receipt of the documents specified in section 177(1), the Registrar shall cause a certificate of continuation of the company to be issued.

Continuation.

(2) A certificate of continuation issued by the Registrar under sub-section (1) is conclusive evidence that—

- (a) all the requirements of this Act as to continuation have been complied with; and
- (b) the company is continued as a company incorporated under this Act under the name designated in its articles on the date specified in the certificate of continuation.

179.-(1) When a foreign company is continued under this Act—

Effect of continuation.

- (a) this Act applies to the company as if it had been incorporated under section 7 after the commencement date;
- (b) the company is capable of exercising all the powers of a company incorporated under this Act;
- (c) the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside Belize; and
- (d) the articles and by-laws filed under section 177(1) become the articles and by-laws of the company.

(2) The continuation of a foreign company under this Act does not affect—

- (a) the continuity of the company as a legal entity; or
- (b) the assets, rights, obligations or liabilities of the company.

(3) Without limiting sub-section (2)—

- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
- (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or

against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

(4) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation shall be deemed to have been issued in conformity with this Act.

180.—(1) Subject to its articles or by-laws, a company for which the Registrar would issue a certificate of good standing pursuant to section 299(1) may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Belize in the manner provided under those laws.

Continuation
under foreign
law.

(2) A company that continues as a company incorporated under the laws of jurisdiction outside Belize does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside Belize permit the continuation and the company has complied with those laws.

(3) The Registered Agent of a company that continues as a company incorporated under the laws of a jurisdiction outside Belize may file a notice of the company's continuance in the approved form.

(4) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, he shall—

- (a) issue a certificate of discontinuance of the company in the approved form;

- (b) strike the name of the company off the Register of Companies with effect from the date of the certificate of discontinuance; and
- (c) publish the striking off of the company in the *Gazette*.

(5) A certificate of discontinuance issued under subsection (4) is prima facie evidence that—

- (a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and
- (b) the company was discontinued on the date specified in the certificate of discontinuance.

(6) Where a company is continued under the laws of a jurisdiction outside Belize—

- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Belize;
- (b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Belize;
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against

any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Belize, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and

- (d) service of process may continue to be effected on the Registered Agent of the company in Belize in respect of any claim, debt, liability or obligation of the company during its existence as a company under this Act.

PART XII

Members' Remedies

181. In this Part, “member”, in relation to a company, means—

Interpretation
for this Part.

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

182.—(1) If a company or a director of a company engages in, or proposes to engage in, conduct that contravenes this Act or the articles or by-laws of the company, the Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from

Restraining or
Compliance
Order.

engaging in conduct that contravenes, this Act or the articles or by-laws.

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

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

Derivative
actions.

183.—(1) Subject to sub-section (3), the Court may, on the application of a member of a company, grant leave to that member to—

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

(2) Without limiting sub-section (1), in determining whether to grant leave under that sub-section, the Court must take the following matters into account—

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

(e) whether an alternative remedy to the derivative claim is available.

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

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

(4) Unless the Court otherwise orders, not less than twenty-eight days' notice of an application for leave under sub-section (1) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.

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

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

184.—(1) If the Court grants leave to a member to bring or intervene in proceedings under section 183, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

Cost of
derivative
action.

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

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

Powers of Court when leave granted under section 183.

185. The Court may, at any time after granting a member leave under section 183, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including—

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

Compromise, settlement or withdrawal of derivative action.

186. No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 183 may be settled or compromised or discontinued without the approval of the Court.

187. A member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

Personal
actions by
members.

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

Representative
actions.

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

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

Prejudiced
members.

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

- (a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;
- (b) requiring the company or any other person to pay compensation to the member;
- (c) regulating the future conduct of the company's affairs;

- (d) amending the articles or by-laws of the company;
- (e) appointing a receiver of the company;
- (f) appointing a liquidator of the company;
- (g) directing the rectification of the records of the company; or
- (h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the articles or by-laws of the company.

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

PART XIII

Foreign Companies

Meaning of
“carrying on
business.”

190.—(1) A reference in this Part to a foreign company carrying on business in Belize includes a reference to the foreign company establishing or having a place of business in Belize.

(2) For the purposes of this Part, a foreign company does not carry on business in Belize solely by reason of the fact that, in Belize, it—

- (a) is or becomes a party to legal proceedings or settles a legal proceeding or a claim or dispute;
- (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs;

- (c) maintains a bank account;
- (d) effects a sale of property through an independent contractor;
- (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Belize;
- (f) creates evidence of a debt, or creates a charge on property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of thirty one days, not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

191.-(1) A foreign company shall not carry on business in Belize unless it is registered under this Part.

**Registration
of foreign
company.**

(2) An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by-

- (a) evidence of its incorporation;
- (b) a certified copy of the instrument constituting or defining its constitution;
- (c) a list of its directors and members as at the date of the application specifying the full name, nationality and address of each director;

- (d) a notice specifying the name of the person appointed as the Registered Agent of the foreign company in Belize, endorsed by the Registered Agent with his agreement to act as registered agent;
- (e) if a document specified in paragraph (a) to (d) is not in English, a translation of the document certified as accurate in accordance with the Regulations; and
- (f) such other documentation as may be prescribed.

(3) A foreign company that contravenes sub-section (1) commits an offence and is liable on indictment to a fine of \$100,000.

Registration.

192. Where the Registrar receives an application complying with section 191(2), and subject to section 195, he shall register the foreign company in the Register of Foreign Companies and issue a certificate of registration as a foreign company in the approved form.

**Registration
of changes in
particulars.**

193.—(1) A foreign company registered under this Part shall file a notice in the approved form within one month after a change in—

- (a) its corporate name;
- (b) the jurisdiction of its incorporation;
- (c) the instrument constituting or defining its constitution;
- (d) its directors and members, or in the information filed in respect of a director;
- (e) its beneficial owners and shareholders; or

(f) its Registered Agent.

(2) A notice of change of Registered Agent shall be endorsed by the new Registered Agent with his agreement to act as Registered Agent.

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by—

- (a) a certified copy of the new or amended instrument; and
- (b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) A foreign company that contravenes this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

194.—(1) A foreign company that carries on business in Belize shall, at all times, have a Registered Agent in Belize.

Foreign
company
to have
Registered
Agent.

(2) No person shall act, or agree to act, as the Registered Agent of a foreign company unless that person has obtained a licence from the Financial Services Commission established under the Financial Services Commission Act, or any other applicable enactment.

CAP. 272.

(3) A foreign company that contravenes this sub-section (1) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

(4) A person who contravenes sub-section (2) commits an offence and is liable on indictment (if the offender is a natural person), to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding one year,

or to both such fine and imprisonment; and if the offender is other than a natural person, to a fine not exceeding two hundred thousand dollars.

Control
over names
of foreign
companies.

195.—(1) Where the Registrar is satisfied that the corporate name of, or a name being used by, a foreign company carrying on business in Belize is undesirable, he may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in Belize under, or using, that name.

(2) A foreign company on which a notice is served under sub-section (1) shall not carry on business in Belize under, or using, the name specified in the notice from—

- (a) a date thirty days after the date of the service of the notice; or
- (b) such later date as may be specified in the notice.

(3) The Registrar may, at any time, withdraw a notice served under sub-section (1).

(4) A foreign company on which a notice is served under sub-section (1) shall, if it proposes to carry on business in Belize under, or using, an alternate name, file a notice of the alternate name.

(5) A foreign company that contravenes sub-section (2) commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Use of name
by foreign
company.

196.—(1) A foreign company that carries on business in Belize shall ensure that its full corporate name and the name of the country of its incorporation are clearly stated in—

- (a) every communication sent by it, or on its behalf; and

- (b) every document issued or signed by it, or on its behalf, that evidences or creates a legal obligation of the foreign company.

(2) For the purposes of sub-section (1), a generally recognised abbreviation of a word or words may be used in the name of a foreign company if it is not misleading to do so.

197.-(1) A foreign company registered under this Part shall, on or before 30 June of each year, file an annual return made up to 31 December of the previous year.

Annual return.

(2) The annual return shall-

- (a) be in the approved form; and
- (b) be certified as correct by a director of the foreign company or by its Registered Agent.

198.-(1) A foreign company shall, within seven days of ceasing to carry on business in Belize, file a notice in the approved form.

Foreign company ceasing to carry on business in Belize.

(2) On receipt of a notice under sub-section (1), the Registrar shall remove the name of the foreign company from the Register of Foreign Companies and, from that time, the person appointed as the Registered Agent of the foreign company ceases to be its Registered Agent.

199.-(1) A document may be served on a foreign company registered under this Part by leaving it at, or sending it by post to, the address of the Registered Agent of the foreign company.

Service of documents on a foreign company registered under this Part.

(2) Sub-section (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

Validity of transactions not affected.

200. A failure by a foreign company to comply with this Part does not affect the validity or enforceability of any transaction entered into by the foreign company.

Transitional provision.

201. A foreign company registered under any of the repealed Acts at the effective date is deemed to be registered under this Part.

Foreign Company Regulations.

202. The Commission may, with the approval of the Minister, make Regulations for the better carrying out by a foreign company of any of the requirements or provisions under this Part.

PART XI

Liquidation, Striking-Off, Dissolution and Winding Up

Sub-Part 1

Liquidation

Application of this Part.

203. A company may only be liquidated under this Sub-Part if—

(a) it has no liabilities; or

(b) it is able to pay its debts as at the date they become due.

Interpretation of this Part.

204. In this Part—

“company” includes a foreign company in respect of which the Court has made a winding up order;

“contributory” means—

(a) every person liable to contribute to the assets of a company in the event that it is wound up under this Act; and

(b) every holder of fully paid up shares of a company;

“controller” means a person appointed by the competent authorities pursuant to written law to take control of a company;

“document” includes any device by means of which information is recorded or stored;

“foreign practitioner” means a person who is qualified under the law of a foreign country to perform functions equivalent to those performed by official liquidators under this Act or any other enactments;

“limited partnership” means an ordinary limited partnership registered in accordance with the Limited Liability Partnership Act CAP 258;

“official liquidator” means the liquidator of a company which is being wound up by order of the Court or under the supervision of the Court and includes a provisional liquidator;

“professional service provider” means a person who contracts to provide general managerial or administrative services to a company on an annual or continuing basis; and

“qualified insolvency practitioner” means a person holding the qualifications as the Court considers appropriate for the conduct of the winding up of a company.

205.—(1) Where it is proposed to appoint a voluntary liquidator under this Sub-Part, the directors of the company shall—

(a) make a declaration of solvency in the approved form stating that, in their opinion, the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and

Declaration of solvency.

- (b) approve a liquidation plan specifying—
- (i) the reasons for the liquidation of the company;
 - (ii) their estimate of the time required to liquidate the company;
 - (iii) whether the liquidator is authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;
 - (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator; and
 - (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) A declaration of solvency has no effect for the purposes of this Part unless—

- (a) it is made on a date no more than four weeks earlier than the date of the resolution to appoint a voluntary liquidator; and
- (b) it includes a statement of the company's assets and liabilities as at the latest practical date before the making of the declaration.

(3) A liquidation plan has no effect for the purposes of this Part unless it is approved by the directors no more

than six weeks prior to the date of the resolution to appoint a voluntary liquidator.

(4) A director making a declaration of solvency under this section without having reasonable grounds for the opinion that the company is and will continue to be able to discharge, pay or provide for its debts in full as they fall due, commits an offence and is liable on indictment to a fine of \$100,000.

206.—(1) Subject to section 207, a voluntary liquidator may be appointed in respect of a company—

Appointment
of liquidator.

- (a) by a resolution of directors passed under sub-section (2); or
- (b) by a resolution of members passed under sub-section (3).

(2) The directors of a company may, by resolution, appoint an eligible individual as the voluntary liquidator of the company—

- (a) upon the expiration of such time as may be specified in its articles or by-laws for the company's existence;
- (b) upon the happening of such event as may be specified in its articles or by-laws as an event that shall terminate the existence of the company;
- (c) in the case of a company limited by shares, if it has never issued any shares; or
- (d) in any other case—
 - (i) if the articles or by-laws permit them to pass a resolution for the appointment of a voluntary liquidator; and

- (ii) the members have, by resolution, approved the liquidation plan.
- (3) The members of a company may, by resolution—
 - (a) approve the liquidation plan; and
 - (b) appoint an eligible individual as the voluntary liquidator of the company.
- (4) The following provisions apply to a members' resolution under sub-section (2)(d)(ii) or (3)—
 - (a) holders of the outstanding shares of a class or series of shares are entitled to vote on the resolution as a class or series only if the articles or articles so provide;
 - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the liquidation plan, shall be given to each member, whether or not entitled to vote on the liquidation plan; and
 - (c) if it is proposed to obtain the written consent of members, a copy of the liquidation plan shall be given to each member, whether or not entitled to consent to the liquidation plan.
- (5) The Regulations may provide for descriptions or categories of individuals who are eligible to be appointed as the voluntary liquidator of a company under this section.

Appointment
of voluntary
liquidator
of long-term
insurance
company or
other regulated
entity.

207.—(1) A voluntary liquidator shall not be appointed under this Sub-Part in respect of a long-term insurance company and any appointment made in contravention of this sub-section is void and of no effect.

(2) A resolution to appoint a voluntary liquidator shall not be passed under section 206(1) by the directors or members of a company that is a regulated entity, unless the Commission acting on the advice of the Supervisor of Insurance has—

- (a) given its prior written consent to the company being put into voluntary liquidation; and
- (b) approved the appointment of the individual proposed as voluntary liquidator.

(3) Any resolution passed in contravention of sub-section (2) and any appointment of a liquidator who has not been approved by the Commission under sub-section (2) is void and of no effect.

208.—(1) The Commission may, at any time during or after the completion of the voluntary liquidation of a regulated entity, require the liquidator to produce for inspection, at such place as it may specify—

- (a) his records and accounts in respect of the liquidation; and
- (b) any reports that he has prepared in respect of the liquidation.

(2) The Commission may cause the accounts and records produced to it under sub-section (1) to be audited.

(3) The voluntary liquidator of a regulated entity shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

(4) The Registrar and any other regulator so designated under written law or prescribed by the Minister shall have all the powers of the Commission under this section.

Control of
voluntary
liquidation
of regulated
entity.

Duration of liquidation.

209. The liquidation of a company under this Sub-Part commences at the time at which a voluntary liquidator is appointed under section 206 and continues until it is terminated in accordance with section 215 or section 216 and throughout this period, the company is referred to as being in voluntary liquidation.

Circumstances in which voluntary liquidator may not be appointed.

210.—(1) A voluntary liquidator may not be appointed under section 206 by the directors or the members of a company if—

- (a) an application has been made to the Court to appoint an administrator or a liquidator of the company and the application has not been dismissed;
- (b) the person to be appointed voluntary liquidator has not consented in writing to his appointment;
- (c) the directors of the company have not made a declaration of solvency complying with section 205; or
- (d) the directors have not approved a liquidation plan under section 205(1)(b).

(2) A resolution to appoint a voluntary liquidator under this Part in the circumstances referred to in sub-section (1) is void and of no effect.

(3) Where a voluntary liquidator is appointed under this section, the directors or the members, as the case may be, shall, as soon as practicable, give the liquidator notice of his appointment.

Notice and advertisement of liquidation.

211. Where a voluntary liquidator is appointed under section 206 the liquidator shall—

- (a) within fourteen days of the commencement of the liquidation, file the following documents—
 - (i) a notice of the appointment;
 - (ii) the declaration of solvency made by the directors; and
 - (iii) a copy of the liquidation plan; and
- (b) within thirty days of commencement of the liquidation, advertise notice of his appointment in the manner prescribed.

212.—(1) Subject to sub-sections (2) and (3), with effect from the commencement of the voluntary liquidation of a company—

- (a) the voluntary liquidator has custody and control of the assets of the company; and
- (b) the directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under this Part.

Effect of
appointment
of voluntary
liquidator.

(2) Sub-section (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.

(3) Notwithstanding sub-section (1)(b), the directors, after the commencement of the voluntary liquidation, may—

- (a) authorise the liquidator to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company where the liquidation plan does not give the liquidator such authorisation; and

- (b) exercise such powers as the liquidator, by written notice, may authorise them to exercise.

Duties of
voluntary
liquidator.

213.–(1) The principal duties of a voluntary liquidator are to–

- (a) take possession of, protect and realise the assets of the company;
- (b) identify all creditors of and claimants against the company;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) distribute the surplus assets of the company to the members in accordance with the articles and by-laws;
- (e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) send a copy of the statement of account to all members if so required by the liquidation plan required by section 205(1)(b).

(2) A transfer, including a prior transfer, described in section 28(3) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of sub-section (1)(c) and (d).

Powers of
voluntary
liquidator.

214.–(1) In order to perform the duties imposed on him under section 213, a voluntary liquidator has all powers of the company that are not reserved to the members under this Act or in the articles or by-laws, including, but not limited to, the power–

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain solicitors, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or from the directors under section 212(3)(a), as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding sub-section (1)(h), a voluntary liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary liquidation for a period of more than two years.

**Termination
of voluntary
liquidation.**

215.—(1) The Court may, at any time after the appointment of a voluntary liquidator under section 206, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.

(2) An application under sub-section (1) may be made by the voluntary liquidator or by a director, member or creditor of the company.

(3) Before making an order under sub-section (2), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An order under sub-section (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(5) Where the Court makes an order under sub-section (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

**Completion of
liquidation.**

216.—(1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation

has been completed and upon receiving the statement, the Registrar shall—

- (a) strike the company off the Register of Companies; and
- (b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.

(2) Where the Registrar issues a certificate of dissolution under sub-section (1), the dissolution of the company is effective from the date of the issue of the certificate.

(3) Immediately following the issue by the Registrar of a certificate of dissolution under sub-section (1), the person who, immediately prior to the dissolution, was the voluntary liquidator of the company shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register of Companies and dissolved.

Sub-Part 2

Striking Off and Dissolution

217. In this Sub-Part, “Register” means the Register of Companies.

Interpretation for this Sub-Part.

218.—(1) The Registrar may strike the name of a company off the Register if—

Striking company off Register.

- (a) the company—
 - (i) fails to appoint a Registered Agent under section 84(4) or 85(4); or
 - (ii) fails to file any return, notice or document required to be filed under this Act;

- (b) he is satisfied that—
 - (i) the company has ceased to carry on business; or
 - (ii) the company is carrying on business for which a licence, permit or authority is required under the laws of Belize without having such licence, permit or authority; or
- (c) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) Before striking a company off the Register on the grounds specified in sub-section (1)(a) or (1)(b), the Registrar shall—

- (a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no less than thirty days after the date of the notice; and
- (b) publish a notice of his intention to strike the company off the Register in the *Gazette*.

(3) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(4) The Registrar shall publish a notice of the striking of a company from the Register in the *Gazette* and such other publication as the Registrar determines.

(5) The striking of a company off the Register is effective from the date of the notice published in the *Gazette* under sub-section (4).

(6) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the Registered Agent or to publish a notice in the *Gazette* under sub-section (4).

219.—(1) Any person who is aggrieved by the striking of a company off the Register under section 218 may, within ninety days of the date of the notice published in the *Gazette*, appeal to the Court.

Appeal.

(2) Notice of an appeal to the Court under sub-section (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under sub-section (1) of any person aggrieved by the striking of a company off the Register, suspend the operation of the striking off upon such terms as he considers appropriate, pending the determination of the appeal.

220.—(1) Where a company has been struck off the Register, the company and the directors, members and any liquidator or receiver thereof, may not—

Effect of striking off.

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
- (c) act in any way with respect to the affairs of the company.

(2) Notwithstanding sub-section (1), where a company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may—

- (a) make application for restoration of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that a company is struck off the Register does not prevent—

- (a) the company from incurring liabilities; or
- (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution,

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

Dissolution of company struck off the Register.

221. Where a company that has been struck off the Register under section 218(1) remains struck off continuously for a period of five years, it is dissolved with effect from the last day of that period.

Restoration of name of company to Register by Registrar.

222.—(1) Where a company has been struck off the Register, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register and issue a certificate of restoration to the Register.

(2) Where the company has been struck off the Register under section 218(1), the Registrar shall not restore the company to the Register unless—

- (a) he is satisfied that a licensed person has agreed to act as Registered Agent of the company; and
- (b) he is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register.

(3) An application to restore a company to the Register under sub-section (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within five years of the date of the notice published in the *Gazette* under section 218(2).

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

(5) Notice of an appeal to the Judge in chambers under sub-section (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

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

223.—(1) Where a company has been dissolved, an application may be made to the Court in accordance with sub-section (2) to declare the dissolution of the company void and restore the company to the Register.

Declaration that dissolution is void and restoration of name to Register by Court.

(2) An application under sub-section (1)—

- (a) may be made by the company or by a creditor, member or liquidator of the company; and

(b) shall be made within ten years of the date that the company was dissolved.

(3) On an application under sub-section (1), the Court may declare the dissolution of the company void and restore the company to the Register subject to such conditions as it considers just.

(4) Where a company is restored to the Register under this section, the company is deemed never to have been dissolved or struck off the Register.

Appointment
of Official
Receiver as
liquidator of
company struck
off.

224.—(1) Where a company has been struck off the Register, the Registrar may apply to the Court for the appointment of the Official Receiver or a qualified insolvency practitioner as liquidator of the company.

(2) Where the Court makes an order under sub-section (1) the company is restored to the Register for the purposes of the liquidation of the company.

Property of
dissolved
company.

225.—(1) Subject to sub-section (2), 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 restored to the Register, any property, other than money, that was vested in the Crown under sub-section (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

(3) The company is entitled to be paid out of the Consolidated Revenue Fund—

(a) any money received by the Crown under sub-section (1) in respect of the company; and

(b) if property, other than money, vested in the Crown under sub-section (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 realized by the Crown by the disposition of that property.

(4) The Commission may, with the approval of the Minister, make Regulations to give effect to this section including regulations to make provision for the holding in trust assets of a dissolved company.

226.—(1) In this section, “onerous property” means—

Disclaimer.

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) The Minister may, by notice in writing published in the *Gazette*, disclaim the Crown’s title to onerous property which vests in the Crown under section 225.

Sub-Part 3

Winding Up by the Court

227.—(1) A company may be wound up by the Court if—

Circumstances in which a company may be wound up by the Court.

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

- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (c) the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be wound up;
 - (d) the company is unable to pay its debts or is insolvent;
 - (e) so directed by the relevant regulator or supervisor in accordance with written law; or
 - (f) the Court is of opinion that it is just and equitable that the company should be wound up.
- (2) A company may be wound up–
- (a) compulsorily by order of the Court;
 - (b) voluntarily–
 - (i) by virtue of a special resolution;
 - (ii) because the period, if any, fixed for the duration of the company by its articles of association has expired; or
 - (iii) because the event, if any, has occurred, on the occurrence of which its articles of association provide that the company shall be wound up; or

(c) under the supervision of the Court.

(3) For the purposes of this Part, “winding up order” includes an order that a voluntary winding up continue under the supervision of the Court and references to a company being wound up by the Court includes a company which is being wound up under the supervision of the Court.

(4) The Court has jurisdiction to make winding up orders in respect of—

- (a) an existing company;
- (b) a company incorporated and registered or continued under this Act;
- (c) a body incorporated under any other law in Belize; and
- (d) a foreign company which—
 - (i) has property located in Belize;
 - (ii) carries on business in Belize; or
 - (iii) is the general partner of a limited partnership.

228.—(1) A company shall be deemed to be unable to pay its debts if—

- (a) a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding [one hundred dollars] then due, has served on the company by leaving at its registered office a demand under that person’s hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service

Definition of inability to pay debts.

of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

- (b) execution of other process issued on a judgment, decree or order obtained in the Court in favour of any creditor at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Application for winding up.

229.—(1) An application to the Court for the winding up of a company shall be by petition presented either by—

- (a) the company;
- (b) any creditor or creditors (including any contingent or prospective creditor or creditors);
- (c) any contributory or contributories; or
- (d) competent regulatory or licensing authorities, in respect of any company which is carrying on a regulated business in Belize upon the grounds that it is not duly licensed or registered to do so under written law or for any other reason as provided under any written law.

(2) A contributory is not entitled to present a winding up petition unless either—

- (a) the shares in respect of which that person is a contributory, or some of them, are partly paid; or
- (b) the shares in respect of which that person is a contributory, or some of them, either were—

- (i) originally allotted to that person, or have been held by that person, and registered in that person's name for a period of at least six months immediately preceding the presentation of the winding up petition; or
- (ii) have devolved on that person through the death of a former holder.

230.-(1) Upon hearing the winding up petition the Court may-

Powers of the Court.

- (a) dismiss the petition;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make a provisional order; or
- (d) any other order that it thinks fit,

but the Court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged or charged to an amount equal to or in excess of those assets or that the company has no assets.

(2) The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company.

(3) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely-

- (a) an order regulating the conduct of the company's affairs in the future;
- (b) an order requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;
- (c) an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the Court may direct; or
- (d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company's capital accordingly.

(4) Where an alternative order under sub-section (3) requires the company not to make any, or any specified, alteration in the articles, the company does not have power, without the leave of the Court, to make any such alteration in breach of that requirement.

(5) Any alteration in a company's articles made by virtue of an alternative order under sub-section (3) is of the same effect as if duly made by resolution of the company, and the provisions of this Act shall apply to the articles as so altered accordingly.

(6) A copy of an alternative order made under sub-section (3) altering, or giving leave to alter, a company's articles shall be filed by the company with the Registrar within fourteen days of the making of the order.

231.—(1) At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may—

Power to stay or restrain proceedings.

- (a) where any action or proceeding against the company, including a criminal proceeding, is pending in a summary court, the Court, the Court of Appeal or the Caribbean Court of Justice, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any action or proceeding is pending against the company in a foreign court, apply to the Court for an injunction to restrain further proceedings therein,

and the court to which application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

232.—(1) When a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

Stay and avoidance of proceedings on making of winding up order.

(2) When a winding up order has been made, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

233.—(1) When a winding up order is made, the liquidator shall—

Notice of winding up order.

- (a) file a copy of the winding up order with the Registrar; and

- (b) publish notice of the winding up in the *Gazette* and any newspaper in which the winding up petition was advertised.

Voidance of property dispositions, etc. on making of winding up order.

234. When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void.

Commencement of winding up by the Court.

235.—(1) If, before the presentation of a petition for the winding up of a company by the Court—

- (a) a resolution has been passed by the company for voluntary winding up;
- (b) the period, if any, fixed for the duration of the company by the articles of association has expired; or
- (c) the event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred,

the winding up of the company is deemed to have commenced at the time of passing of the resolution or the expiry of the relevant period or the occurrence of the relevant event.

(2) In any other circumstance not specified in sub-section (1), the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

Submission of company's statement of affairs.

236.—(1) Where the Court has made a winding up order or appointed a provisional liquidator, the liquidator may require some or all of the persons mentioned in sub-section (3) to prepare and submit to that person a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by an affidavit sworn by the persons required to submit it and shall show—

- (a) particulars of the company's assets and liabilities, including contingent and prospective liabilities;
- (b) the names and addresses of any persons having possession of the company's assets;
- (c) the assets of the company held by those persons;
- (d) the names and addresses of the company's creditors;
- (e) the securities held by those creditors;
- (f) the dates when the securities were respectively given; and
- (g) such further or other information that the liquidator may require.

(3) The persons referred to in sub-section (1) are—

- (a) persons who are or have been directors or officers of the company;
- (b) persons who are or have been professional service providers to the company; and
- (c) persons who are or have been employees of the company, during the period of one year immediately preceding the relevant date.

(4) Where any persons are required under this section to submit a statement of affairs to the liquidator, they shall do so, subject to sub-section (5), before the end of the period of

twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the liquidator.

(5) The liquidator may release a person from an obligation imposed on that person under sub-section (1) or, when giving the notice mentioned in sub-section (4) or subsequently, the liquidator may extend the time for compliance; and if the liquidator refuses to extend the time for compliance, the Court may do so.

(6) In this section, “relevant date” means–

- (a) in a case where a provisional liquidator is appointed, the date of that person’s appointment; and
- (b) in any other case, the commencement of the winding up.

(7) A person who, without reasonable excuse, fails to comply with any obligation imposed under this section commits an offence and is liable on indictment to a fine of \$10,000.

Investigation
by liquidator.

237.–(1) Where a winding up order is made by the Court, the liquidator shall be empowered to investigate–

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, business, dealings and affairs of the company, and to make such report, if any, to the Court as that person thinks fit.

(2) Subject to obtaining the directions of the Court, the liquidator shall have power to–

- (a) assist the competent regulatory and licensing authorities and the Belize Police Department to investigate the conduct of persons referred to in section 236(3); and
- (b) institute and conduct a criminal prosecution of persons referred to in section 236(3).

(3) Subject to obtaining the prior approval of the company's creditors, if it is insolvent, or its contributories, if it is solvent, the directions given under sub-section (2) may include a direction that the whole or part of the costs of investigation and prosecution be paid out of the assets of the company.

238.-(1) This section applies to any person who, whether resident in Belize or elsewhere—

- (a) has made or concurred with the statement of affairs;
- (b) is or has been a director or officer of the company;
- (c) is or was a professional service provider to the company;
- (d) has acted as a controller, advisor or liquidator of the company or receiver or manager of its property; or
- (e) not being a person falling within paragraphs (a) to (c), is or has been concerned or has taken part in the promotion, or management of the company, and such person is referred to in this section as the “relevant person”.

Duty to co-operate and the private examination of relevant persons.

(2) It is the duty of every relevant person to co-operate with the official liquidator.

(3) While a company is being wound up, the official liquidator may at any time before its dissolution apply to the Court for an order—

- (a) for the examination of any relevant person; or
- (b) that a relevant person transfer or deliver up to the liquidator any property or documents belonging to the company.

(4) Unless the Court otherwise orders, the official liquidator shall make an application under sub-section (3) if that person is requested in accordance with the rules to do so by one-half, in value, of the company's creditors or contributories.

(5) On an application made under sub-section (3)(a), the Court may order that a relevant person—

- (a) swear an affidavit in answer to written interrogatories;
- (b) attend for oral examination by the official liquidator at a specified time and place; or
- (c) do both things specified in paragraphs (a) and (b).

(6) The Court may direct that any creditor or contributory of the company be permitted by the official liquidator to participate in an oral examination.

(7) The Court shall have jurisdiction—

- (a) to make an order under this section against a relevant person resident outside Belize; and

- (b) to issue a letter of request for the purpose of seeking the assistance of a foreign court in obtaining the evidence of a relevant person resident outside the jurisdiction.

239.—(1) Subject to this section, the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally.

Appointment and powers of provisional liquidator.

(2) An application for the appointment of a provisional liquidator may be made under sub-section (1) by a creditor or contributory of the company or, subject to sub-section (6), the competent regulatory and licensing authorities, on the grounds that—

- (a) there is a prima-facie case for making a winding up order; and
- (b) the appointment of a provisional liquidator is necessary in order to—
 - (i) prevent the dissipation or misuse of the company's assets;
 - (ii) prevent the oppression of minority shareholders; or
 - (iii) prevent mismanagement or misconduct on the part of the company's directors.

(3) Subject to sub-section (6), an application for the appointment of a provisional liquidator may be made under sub-section (1) by the company ex-parte on the grounds that—

- (a) the company is or is likely to become unable to pay its debts within the meaning of section 228; and

(b) the company intends to present a compromise or arrangement to its creditors.

(4) A provisional liquidator shall carry out only such functions as the Court may confer on that person and that person's powers may be limited by the order appointing that person.

(5) The remuneration of the provisional liquidator shall be fixed by the Court from time to time on that person's application.

(6) An application for the appointment of a provisional liquidator may be presented by the competent regulatory and licensing authorities on the grounds under sub-section (2), in respect of any company which is carrying on a regulated business in Belize upon the grounds that it is not duly licensed or registered to do so under written law or for any other reason as provided under the regulatory laws or any other law regardless of whether or not the competent authorities presented the winding up petition.

Appointment
of official
liquidator.

240.—(1) For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there may be appointed one or more than one person to be called an official liquidator or official liquidators; and the Court may appoint to such office such person as it thinks fit, and if more persons than one are appointed to such office, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any or more of such persons.

(2) The Court may also determine whether any and what security is to be given by an official liquidator on that person's appointment; and if no official liquidator is appointed, or during any vacancy in such office, all the property of the company shall be in the custody of the Court.

(3) The liquidator shall, within twenty-eight days of the date upon which the winding up order is made, summon—

- (a) a meeting of the company's creditors if the order was made on the grounds that the company is insolvent; or
- (b) a meeting of the company's contributories if the order was made on grounds other than insolvency, for the purposes of resolving any other matters which the liquidator puts before the meeting.

(4) The Court may make an order dispensing with the need to summon a meeting under this section or extending the time within which it shall be summoned.

241. When two or more persons are appointed to the office of liquidator, either provisionally or as official liquidators, they shall be authorised to act jointly and severally, unless their powers are expressly limited by order of the Court.

Appointment
of joint
liquidators.

242. An official liquidator may be removed from office by order of the Court made on the application of a creditor or contributory of the company, or the relevant regulator or supervisor where the petition for appointment of the liquidator was made by the relevant regulator or supervisor.

Removal
of official
liquidators.

243.—(1) A foreign practitioner may be appointed to act jointly with a qualified insolvency practitioner.

Qualifications
of official
liquidators.

(2) Official liquidators are officers of the Court.

244.—(1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Remuneration
of official
liquidators.

(2) There shall be paid to the official liquidator such remuneration, by way of percentage or otherwise, and if

more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

Function
and powers
of official
liquidators.

245.–(1) It is the function of an official liquidator–

- (a) to collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and
- (b) to report to the company’s creditors and contributories (or the relevant regulator or supervisor, as applicable) upon the affairs of the company and the manner in which it has been wound up.

(2) The official liquidator may–

- (a) with the sanction of the Court, exercise any of the powers specified in Part I of Schedule I; and
- (b) with or without that sanction, exercise any of the general powers specified in Part II of Schedule I.

Schedule I.

Schedule I.

(3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and subject to sub-section (5), any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of such powers (hereinafter referred to as a “sanction application”).

(4) In the case of–

- (a) a solvent company, a sanction application may only be made by a contributory and the creditors shall have no right to be heard;

- (b) an insolvent company, a sanction application may only be made by a creditor and the contributories shall have no right to be heard; and
- (c) a company whose solvency is doubtful, a sanction application may be made by both contributories and creditors and both contributories and creditors shall have a right to be heard.

(5) For the purposes of this section, a person shall be treated as related to a company if—

- (a) he has acted for the company as a professional service provider;
- (b) he is or was a shareholder or director of the company or of any other company in the same group as the company;
- (c) he has a direct or indirect beneficial interest in the shares of the company; or
- (d) he is a creditor or debtor of the company.

246.—(1) The Court may at any time after an order for winding up, on the application either of the liquidator or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings either all together or for a limited time, on such terms and conditions as the Court thinks fit.

Power to stay winding up.

(2) The Court may at any time after the liquidation has commenced, but before the final meeting has been held as provided for in section 262, on the application of the liquidator accompanied by—

- (a) a special resolution stating that the company will not be wound up and setting out the reasons for such decision;
- (b) proof of a recall notice published in the *Gazette*; and
- (c) such other documents as the Court may consider necessary, make an order to recall the liquidation, place the company into active status and place the company back into good standing as it was prior to the commencement of liquidation on such terms and conditions as the Court thinks fit.

(3) A company shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in the records relating to the company

Settlement
of list of
contributories.

247.—(1) The liquidator shall settle a list of contributories, if any, for which purpose that person shall have power to adjust the rights of contributories amongst themselves.

(2) In the case of a solvent liquidation of a company which has issued redeemable shares at prices based upon its net asset value from time to time, the liquidator shall have power to settle and, if necessary rectify the company's register of members, thereby adjusting the rights of members amongst themselves.

(3) A contributory who is dissatisfied with the liquidator's determination may appeal to the Court against such determination.

Power to make
calls.

248.—(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories—

- (a) to the extent of their liability, for the payment of any money which the Court considers necessary to satisfy the company's debts and liabilities and the expenses of winding up; and
- (b) to the adjustment of the rights of the contributories among themselves, and make an order for payment of any call so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

249.—(1) At any time after making a winding up order the Court may make such orders as it thinks fit for—

Inspection of documents by creditors, etc.

- (a) the inspection of the company's documents by creditors and contributories; and
- (b) the preparation of reports by the official liquidator and the provision of such reports to the company's creditors and contributories.

(2) A contributory shall be entitled to make an application under this section notwithstanding that the company is or may be insolvent and the Court shall not refuse to make an order upon the application of a contributory merely by reason of the fact that the company is or may be insolvent.

250.—(1) The Court shall, as to all matters relating to the winding up, have regard to wishes of the creditors or contributories and for that purpose it may direct reports to be prepared by the official liquidator and meetings of creditors or contributories to be summoned.

Meetings to ascertain wishes of creditors or contributories.

(2) If it considers it necessary to do so, the Court may direct that separate meeting be held of different classes of creditors or contributories.

(3) The votes of creditors and contributories shall be counted by reference to—

- (a) the value of their debts, in the case of creditors;
- (b) the number of votes, in the case of contributories whose shares carry voting rights under the articles of association of the company; and
- (c) the par value of all the shares held, in the case of contributories whose shares do not carry votes under the articles of association of the company and, where there are no par value shares, the net asset value of the company shown.

Sub-Part 4

Voluntary Winding Up

Circumstances in which a company may be wound up voluntarily.

251.—(1) A company incorporated and registered under this Act or an existing company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by its articles expires;
- (b) if the event, if any, occurs, on the occurrence of which the articles provide that the company is to be wound up;
- (c) if the company resolves by special resolution that it be wound up voluntarily; or
- (d) if the company in general meeting resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts as they fall due.

252.-(1) A voluntary winding up is deemed to commence—

Commencement
of winding up.

- (a) at the time of the passing of the resolution for winding up; or
- (b) on the expiry of the period or the occurrence of the event specified in the company's articles, notwithstanding that a supervision order is subsequently made by the Court.

(2) Subject to any contrary provision in its articles, the voluntary winding up of an exempted limited duration company is taken to have commenced upon the expiry of a period of ninety days starting on—

- (a) the death, insanity, bankruptcy, dissolution, withdrawal, retirement or resignation of a member of the company;
- (b) the redemption, repurchase or cancellation of all the shares of a member of the company; or
- (c) the occurrence of any event which, under the articles of the company, terminates the membership of a member of the company, unless there remain at least two members of the company and the company is continued in existence by the unanimous resolution of the remaining members pursuant to amended articles adopted during that period of ninety days.

253.-(1) In the case of a voluntary winding up, the company shall from the commencement of its winding up cease to carry on its business except so far as it may be beneficial for its winding up.

Effect on
business and
status of the
company.

(2) Notwithstanding anything to the contrary contained in the company's articles, its corporate state and powers shall continue until the company is dissolved.

Appointment
of voluntary
liquidator.

254.—(1) One or more liquidators shall be appointed for the purpose of winding up the company's affairs and distributing its assets.

(2) When the winding up has commenced in accordance with the company's articles upon the termination of a fixed period or the occurrence of an event—

- (a) the persons designated as liquidators in the articles shall become such liquidators automatically from the commencement of the winding up; or
- (b) if no such person is designated in the articles or the person designated is unable or unwilling to act, the directors shall convene a general meeting of the company for the purpose of appointing a liquidator.

(3) Except in the case of a person designated as liquidator in the company's articles, the appointment of a voluntary liquidator shall take effect upon the filing of that person's consent to act with the Registrar.

(4) If a vacancy occurs by death, resignation or otherwise in the office of voluntary liquidator appointed by the company—

- (a) the company in a general meeting may fill the vacancy; or
- (b) the Court may fill the vacancy on the application of any contributory or creditor.

(5) On the appointment of a voluntary liquidator all the powers of the directors cease, except so far as the company in a general meeting or the liquidator sanctions their continuance.

(6) When two or more persons are appointed as voluntary liquidators jointly, they shall be authorised to act jointly and severally unless their powers are expressly limited by the resolution or articles of association under which they are appointed.

255. Any person, including a director or officer of the company, may be appointed as its voluntary liquidator.

Qualifications
of voluntary
liquidators.

256.—(1) A voluntary liquidator may be removed from office by a resolution of the company in a general meeting convened especially for that purpose.

Removal of
voluntary
liquidators.

(2) A general meeting of the company for the purpose of considering a resolution to remove its voluntary liquidator may be convened by any shareholder or shareholders holding not less than one fifth of the company's issued share capital.

(3) Whether or not a general meeting has been convened in accordance with sub-section (2), any contributory may apply to the Court for an order that a voluntary liquidator be removed from office on the grounds that that person is not a fit and proper person to hold office.

257.—(1) Where two or more persons are appointed as joint voluntary liquidators, they may resign by filing a notice of resignation with the Registrar, so long as at least one of them continues in office.

Resignation
of voluntary
liquidator.

(2) Except as provided in sub-section (1), a voluntary liquidator wishing to resign shall—

- (a) prepare a report and accounts; and
- (b) convene a general meeting of the company for the purpose of accepting that person's

resignation and releasing that person from the performance of any further duties, and shall cease to hold office with effect from the date upon which the resolution is passed.

(3) In the event that the company fails to pass a resolution accepting that person's resignation, the voluntary liquidator may apply to the Court for an order that that person be released from the performance of any further duties.

Notice of
voluntary
winding up.

258.—(1) Within twenty-eight days of the commencement of a voluntary winding up, the liquidator or, in the absence of any liquidator, the directors shall—

- (a) file notice of the winding up with the Registrar;
- (b) file the liquidator's consent to act with the Registrar;
- (c) file the director's declaration of solvency with the Registrar (if the supervision of the court is not sought);
- (d) in the case of a company carrying on a regulated business, serve notice of the winding up upon the competent authority or licensing authorities; and
- (e) publish notice of the winding up in the *Gazette*.

(2) A director or liquidator who fails to comply with this section commits a breach of this Act and is liable to an administrative fine imposed by the Commission as set out in Regulations.

Application
for
Supervision
Order.

259.—(1) Where a company is being wound up voluntarily its liquidator shall apply to the Court for an order that the liquidation continue under the supervision of the Court unless,

within twenty-eight days of the commencement of the liquidation, the directors have signed a declaration of solvency in the prescribed form in accordance with sub-section (2).

(2) A declaration of solvency means a declaration or affidavit in the prescribed form to the effect that a full enquiry into the company's affairs has been made and that to the best of the directors' knowledge and belief the company will be able to pay its debts in full together with interest at the prescribed rate, within such period, not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration.

(3) A person who knowingly makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the prescribed rate, within the period specified commits an offence and is liable on indictment to a fine of \$100,000 and to imprisonment for two years.

260. Any transfer of shares, not being a transfer with the sanction of the liquidator, and any alteration in the status of the company's members made after the commencement of a voluntary winding up is void.

**Voidance of
share transfers.**

261.—(1) In the event of a voluntary winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and at the end of each succeeding year and such meetings shall be held within three months of each anniversary of the commencement of the liquidation.

**General
meeting at
year's end.**

(2) At each meeting the liquidator shall lay before the meeting a report and account of that person's acts and dealings and the conduct of the winding up during the preceding year.

(3) A liquidator who fails to comply with this section commits an offence and is liable on indictment to a fine of \$10,000.

Final meeting
prior to
dissolution.

262.—(1) As soon as the company's affairs are fully wound up, the liquidator shall make a report and an account of the winding up showing how it has been conducted and how the company's property has been disposed of and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving an explanation for it.

(2) At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each contributory in any manner authorised by the company's articles of association and published in the *Gazette*.

(3) The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed form specifying—

- (a) the date upon which the meeting was held; and
- (b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.

(4) A liquidator who fails to call a general meeting of the company as required by sub-section (1) or fails to make a return as required by sub-section (3) commits an offence and is liable on indictment to a fine of \$10,000.

Effect of
winding up on
share capital
of company
limited by
guarantee.

263. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called upon shall be deemed to be an asset of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by that person, and payable at such time as may be appointed by the liquidator.

264.—(1) The voluntary liquidator or any contributory may apply to the Court to determine any question arising in the voluntary winding up of a company or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up under the supervision of the Court.

Reference of questions to Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partly to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The voluntary liquidator shall, within seven days of the making of an order under this section, forward a copy of the order to the Registrar who shall enter it in that person's records relating to the company.

265.—(1) The expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Expenses of voluntary winding up.

(2) The rate and amount of the liquidator's remuneration shall be fixed and payment authorised by resolution of the company.

(3) Each report and account laid before the company in general meetings by its liquidator shall contain all such information, including the rate at which the liquidator's remuneration is calculated and particulars of the work done, as may be necessary to enable the members to determine what expenses have been properly incurred and what remuneration is properly payable to the liquidator.

(4) If the company fails to approve the liquidator's remuneration and expenses or the liquidator is dissatisfied with the decision of the company, that person may apply to the Court which shall fix the rate and amount of that person's remuneration and expenses.

Sub-Part 5

Winding up subject to the supervision of the Court

Application for
Supervision
Order

266. When a resolution has been passed by a company to wind up voluntarily, the liquidator or any contributory or creditor may apply to the Court for an order for the continuation of the winding up under the supervision of the Court, notwithstanding that the declaration of solvency has been made in accordance with section 259, on the grounds that—

- (a) the company is or is likely to become insolvent; or
- (b) the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors.

Appointment
of official
liquidator.

267.—(1) When making a supervision order the Court—

- (a) shall appoint one or more qualified insolvency practitioners; and
- (b) may, in addition, appoint one or more foreign practitioners, as liquidator or liquidators of the company and section 240 shall apply as if the Court had made a winding up order.

(2) Unless a voluntary liquidator is appointed as an official liquidator, that person shall prepare a final report and accounts within twenty-eight days from the date of the supervision order.

Effect of
supervision
order.

268. A supervision order shall take effect for all purposes as if it was an order that the company be wound up by the Court except that—

- (a) the liquidation commenced in accordance with section 252 and
- (b) the prior actions of the voluntary liquidator shall be valid and binding upon the company and its official liquidator.

269.—(1) Where a company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, any person, who is or was an officer, professional service provider, voluntary liquidator or controller of the company and who, within the twelve months immediately preceding the commencement of the winding up, has—

Fraud, etc. in anticipation of winding up.

- (a) concealed any part of the company's property to the value of ten thousand dollars or more or concealed any debt due to or from the company;
- (b) removed any part of the company's property to the value of ten thousand dollars or more;
- (c) concealed, destroyed, mutilated or falsified any documents affecting or relating to the company's property or affairs;
- (d) made any false entry in any documents affecting or relating to the company's property or affairs;
- (e) parted with, altered or made any omission in any document affecting or relating to the company's property or affairs; or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

with intent to defraud the company's creditors or contributories commits an offence and is liable on indictment to a fine and to imprisonment for five years.

(2) In this section, "officer" includes a shadow director.

Transactions
in fraud of
creditors.

270. Where a company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, any officer or professional service provider of the company who—

- (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property; or
- (b) has concealed or removed any part of the company's property, with intent to defraud the company's creditors or contributories commits an offence and is liable on indictment to a fine and to imprisonment for five years.

Misconduct
in course of
winding up.

271. Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, officer or professional service provider of the company and who—

- (a) does not to the best of that person's knowledge and belief fully and truly discover to the liquidator—
 - (i) all the company's property (except such part as has been disposed of in the ordinary way of the company's business);
 - (ii) the date on which and manner in which the company's property or any part thereof property was disposed of, if it was disposed of;

liable on indictment to a fine of \$100,000 or to imprisonment for a term of five years, or to both.

Material omissions from statement relating to company's affairs.

272.—(1) Where a company is being wound up, whether by the Court or voluntarily, a person who is or was a director, an officer, a manager or a professional service provider of the company, commits an offence if that person makes any material omission in any statement relating to the company's affairs, with intent to defraud the company's creditors or contributories.

(2) A person who commits an offence under sub-section (1) is liable on indictment to a fine of \$25,000 or to imprisonment for a term of five years, or to both.

PART XV

Netting Agreements

Interpretation of this Part.

273.—(1) In this Part—

“financial contract” means a contract of a type specified in the Regulations as a financial contract;

“master netting agreement” has the meaning specified in sub-section (4);

“netting” means the termination of financial contracts, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due, if any, by one party to the other where each such determination and set off is effected in accordance with the terms of a netting agreement between those parties;

“netting agreement” has the meaning specified in sub-section (2); and

“party” means a person constituting one of the parties to an agreement.

(2) A netting agreement is an agreement between two parties only, in relation to present or future financial contracts between them the provisions of which include, the termination of those contracts for the time being in existence, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due.

(3) A netting agreement may provide for—

(a) a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the financial contracts concerned; and

(b) the set off against the net amount due under sub-section (2) and that amount only of—

(i) any money provided solely to secure the obligation of either party in respect of the financial contracts concerned; or

(ii) the proceeds of the enforcement and realisation of any collateral in the form of—

(A) security interests or other assets provided; or

(B) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (a), solely to secure the obligation of either

party in respect of the financial contracts concerned.

(4) A master netting agreement is an agreement between two parties only, in relation to netting agreements between them—

- (a) the provisions of which include the set-off of the net amounts due under two or more netting agreements between them;
- (b) which may provide for a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the netting agreements concerned; and
- (c) which may provide for the set off against the net amount due under paragraph (a) and that amount only of—
 - (i) any money provided solely to secure the obligation of either party in respect of the netting agreements concerned; or
 - (ii) the proceeds of the enforcement and realisation of any collateral in the form of—
 - (A) security interests or other assets provided; or
 - (B) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (b), solely to secure the obligation of either party in respect of the netting agreements concerned.

274.–(1) Notwithstanding anything contained in this Act or in any rule of law relating to insolvency–

Enforcement
of netting
agreement.

- (a) the provisions relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security; and
- (b) the provisions relating to set off of the net amounts due under netting agreements, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a master netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security.

(2) Nothing in sub-section (1)–

- (a) prevents the application of this Act, any other enactment or rule of law which would prevent the legal enforceability of netting, set off, enforcement and realisation in any particular case, on the grounds of fraud or misrepresentation or on any similar ground; or
- (b) permits the enforceability of netting, set off, enforcement and realisation if any provision of an agreement between the two parties

concerned would make netting, set off, enforcement and realisation void whether because of fraud or misrepresentation or any similar ground.

PART XVI

Investigation of Companies

Definition of
“inspector.”

275. In sections 276 to 281, “inspector” means an inspector appointed by an order made under section 276(2).

Investigation
order.

276.—(1) A member holding at least ten percent of the company or the Registrar or the relevant regulator or supervisor may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its affiliated companies.

(2) If, upon an application under sub-section (1), 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 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
- (c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under sub-section (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

(4) The Regulations may define an affiliated company for the purposes of this Part.

277.-(1) An order made under section 276(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

Court's
powers.

(2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to—

- (a) replace the inspector;
- (b) determine the notice to be given to any interested person, or dispense with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;

- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine, in the case of a public company, whether a report of the inspector should be published, and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;
- (j) require an inspector to discontinue an investigation; or
- (k) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of every report he makes under this section.

(4) A report under sub-section (3) shall not be disclosed to any person other than in accordance with an order of the Court made under sub-section (2)(i).

Inspector's
powers.

278. An inspector—

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

Hearing in
camera

279.—(1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him for the purpose.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

280. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject 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.

Incriminating
evidence.

281.—(1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

Privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his client.

PART XVII

Administration and General

282.—(1) The Commission shall, with the approval of the Minister, establish a committee to be known as the “Company Law Review Advisory Committee”.

Company
Law Review
Advisory
Committee.

(2) The Commission shall, with the approval of the Minister, appoint as members of the Committee such persons having knowledge and experience of company law as it considers appropriate.

(3) The functions of the Company Law Review Advisory Committee shall be—

- (a) to keep this Act, and such other enactments relevant to company law as may be specified by the Commission, under review;
- (b) to make such recommendations as it considers appropriate to the Commission for changes to this Act and to any other enactments specified by the Commission under paragraph (a); and
- (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of company law in Belize.

(4) The Chairman of the Committee shall be the Registrar or such other person as he may designate.

(5) The Regulations shall specify rules of procedure for the Committee.

Registrar of
Companies.

283.—(1) The Registrar shall be the Director General of the Commission.

(2) The Registrar may, with the approval of the Commission, appoint or designate a Deputy Registrar to assist with the execution of functions and responsibilities of the Registrar.

(3) The Registrar may, by instrument in writing, delegate any of his duties under this Act to the Deputy Registrar appointed under sub-section (2).

(4) Where the Deputy Registrar is delegated the Registrar's duties under this Act, the Deputy Registrar shall have the relevant powers under this Act to perform such duties as specified in the instrument of delegation.

(5) Where the Deputy Registrar is delegated the Registrar's duties under sub-section (3), the Deputy Registrar shall have the relevant powers under this Act to perform such duties as specified in the instrument of delegation.

(6) The Registrar may, with the approval of the Commission, appoint one or more persons to be Assistant Registrar of Companies.

(7) The Registrar may apply to the court for direction 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 fits.

(8) No liability attaches to the Registrar or any person acting under the authority of the Registrar for any act done in good faith in the discharge of his functions under this Act.

284. There shall be established under the jurisdiction and control of the Commission a Registry known as Belize Companies and Corporate Affairs Registry.

Establishment
of Registry.

285.—(1) In addition to the revenues of the Commission received under and in pursuance of the Financial Services Commission Act, the revenues of the Commission for purposes of this Act shall consist of—

Financial
provisions
regarding the
Registry.

- (a) all sums that may be provided from time to time by the National Assembly;
- (b) all fees, fines and other sums from time to time paid to or received by the Commission from its operations under this Act; and
- (c) all other sums or other property as from time to time may in any manner be lawfully paid to or vested in the Commission in respect of any matter incidental to its powers, functions or duties under this Act.

(2) The revenues of the Commission set forth under sub-section (1) shall not form part of the Consolidated Revenue Fund and shall—

- (a) be placed into and credited to an Operational Fund to be established at a bank approved by the Commission and maintained in the name of the Commission; and
- (b) be applied to carrying out the powers conferred, and duties imposed on the Commission under this Act.

(3) All expenses incurred or payable by the Commission pursuant to this Act shall be paid out of the Operational Fund and all disbursements from the Operational Fund shall be in accordance with accounting procedures that may be made by the Commission from time to time.

Investment.

286.—(1) The Commission may from time to time invest any of its funds not immediately required to be expended in meeting its obligations or discharging its functions under this Act in securities issued by the Government of Belize or by any company in which the Government of Belize has a direct ownership interest of thirty per centum or more, other securities issued by the Central Bank of Belize, and other bank deposits locally.

(2) All interest from such investments shall be paid to the credit of the Operational Fund.

**Operational
Fund.
CAP. 15.**

287.—(1) Subject to the Finance and Audit (Reform) Act, there shall be established an operational fund by the Commission to be called the Operational Fund.

(2) The Commission may determine the management of the Operational Fund, the sums to be carried from time to time to the credit of that fund, and the application of that fund.

(3) The Commission at the end of any financial year, after making such deductions necessary to cover the operations of the Registry and allowances for reserves and contingencies as the Commission may think fit, pay over to the Consolidated Revenue Fund any excess amounts remaining in the Operational Fund, unless the Minister otherwise determines.

288. Nothing in this Act shall limit the authorities, powers, functions and obligations of the Commission as set out in the Financial Services Commission Act, or any other legislation for which the Commission is responsible.

Authority of Commission under other laws.

289. In the exercise of its functions the Commission shall satisfy itself that the provisions of any other Act or regulation administered by the Commission are being complied with.

Functions of the Commission.

290. For the purpose of discharging its functions under this Act, the Commission has power to—

Powers of the Commission.

- (a) take enforcement action against any person for failing to comply with this Act;
- (b) cooperate with and provide assistance to domestic or overseas regulatory authorities;
- (c) publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act;
- (d) make any order which the Commission may make under this Act; and
- (e) do all things, and take all actions, which may be necessary or expedient or are incidental to the discharge of any function or power given to the Commission.

Responsibility
of Director
General.

291. For purposes of this Act, the Director General is responsible for the execution of the policy of the Commission and the management of its affairs, subject to the direction of the Commission.

Delegation
of the
Commission.

292.—(1) The Commission may, by written Order, delegate any responsibility, power or function conferred on it by this Act, except the power to make regulations, to the Director General.

(2) The Director General may, by written order, sub-delegate to any officer of the Commission any responsibility, power or function delegated to the Director General by the Commission under sub-section (1), unless the Commission delegation order specifically states that no sub-delegation is permitted.

Appointment
of Staff.
CAP. 272.

293. Appointment of staff of the Registry shall be in accordance with section 10 of the Financial Services Commission Act.

Filing of
documents.

294.—(1) Except as otherwise provided in this Act or the Regulations, a document required or permitted to be filed by a company under this Act, may only be filed by the Registered Agent of the company.

(2) Except as otherwise provided in this Act or the Regulations, a company shall, on or before 30 June of each year, file an annual return made up to 31 December of the previous year.

(3) The annual return shall—

(a) be in the approved form; and

(b) be certified as correct by a director of the company or by its Registered Agent.

Registers.

295.—(1) The Registrar shall maintain—

- (a) a Register of Companies incorporated or continued under this Act;
- (b) a Register of Foreign Companies registered under Part XII; and
- (c) a Register of Charges registered under Part IX.

(2) The Registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar—

- (a) shall retain every qualifying document filed; and
- (b) shall not retain any document filed that is not a qualifying document.

(4) For the purposes of sub-section (3), a document is a qualifying document if—

- (a) the Act or the Regulations, or another enactment, require or expressly permit the document to be filed; and
- (b) the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

Registrar
may refuse
to receive
or register
document filed.

296.—(1) The Registrar may refuse to receive or register a document filed under this Act if the Registrar is of the opinion that the document—

- (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;
- (f) is not sufficiently permanent for the purposes of the records; or
- (g) contains any information contrary to what has been previously filed.

(2) The Registrar may request that a document refused under sub-section (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 does not contain any matter that is contrary to law and has been duly completed in accordance with the requirements of this Act or any other relevant law, the Registrar may accept the declaration as sufficient proof of the facts declared in it.

Inspection of
Registers and
documents
filed.

297.—(1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may upon payment of the applicable fee—

- (a) inspect the Registers maintained by the Registrar under section 295(1);

- (b) inspect any document retained by the Registrar in accordance with section 295; and
- (c) require a certified or uncertified copy or extract certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under sub-section (1) is admissible in evidence in any proceedings as if it were the original document.

298.-(1) Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form.

Form of certificate.

(2) The Registrar may approve forms to be issued and used in electronic or such other format.

299.-(1) The Registrar shall, upon request by any person, issue a certificate of good standing in the approved form certifying that a company is of good standing if the Registrar is satisfied that—

Certificate of good standing.

- (a) the company is on the Register of Companies or the Register of Foreign Companies; and
- (b) the company has paid all fees, annual fees and penalties due and payable.

(2) The certificate of good standing issued under sub-section (1) shall contain a statement as to whether—

- (a) the company has filed articles of merger or consolidation that have not yet become effective;
- (b) the company has filed articles of arrangement that have not yet become effective;
- (c) the company is in voluntary liquidation; or
- (d) any proceedings to strike the name of the company off the Register of Companies have been instituted.

Fees and penalties to be paid to Registrar.

300.—(1) Any fee or penalty payable under this Act that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable in the Court.

(2) The Registrar may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in sub-section (1) and the registration of the certificate in the court has the same force and effect as it if were a judgment obtained in the Court for the recovery of a debt in the amount specified in the certificate together with the costs of registration.

Recovery of penalties, etc.

301.—(1) Any fee or penalty payable under this Act that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Registrar before a Magistrate in civil proceedings notwithstanding the amount sought to be recovered.

(2) The Registrar may file in the Court a certificate signed by the Registrar and setting out—

- (a) the amount of the penalty assessed pursuant to sub-section (1); and
- (b) the person from whom the penalty is to be recovered.

(3) A certificate filed pursuant to this section has the same force and effect as if it were a judgment obtained in the Court for the recovery of a debt in the amount set out in the certificate, together with reasonable costs and charges with respect to its filing.

302. A company continues to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register of Companies.

Company struck off liable for fees, etc.

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

Fees payable to Registrar.

304. The Registrar may approve and alter as needed the forms and data required on the online business registry system.

Approval of forms and data by Registrar.

305.—(1) The Registrar may accept any document signed, notarised, apostilled or sealed electronically and such documents shall have the same force and effect as if the signature or seal is affixed to a paper copy of the document.

Electronic signatures and Transactions.

(2) The Electronic Transactions Act shall apply to this Act and Regulations made hereunder, except where specified otherwise by Regulations made hereunder.

CAP. 229:03

306.—(1) The Commission may, with the approval of the Minister, make Regulations (“the Regulations”) generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

Companies Regulations and Guidelines.

(2) Without limiting sub-section (1), the Regulations may provide for the circumstances in which, and the procedures by which, a company may re-register from one type of company under this Act to another type of company under this Act.

(3) Without limiting sub-section (1), the Regulations may make provision for enabling the undertaking, property and liabilities of a company to be divided among 2 or more companies.

(4) Regulations made under this section may create offences and prescribe penalties.

(5) Regulations made under this section may—

- (a) provide for the Commission to exercise a discretion in respect of matters prescribed by the Regulations;
- (b) permit the Commission to publish fees that may be imposed by the Regulations; and
- (c) permit the Commission and the Registrar to publish material in respect of matters prescribed by the Regulations.

(6) The Regulations may make different provision in relation to different persons, circumstances or cases.

(7) Regulations made under this section may also provide for the waiver of any fees prescribed to be paid under this Act.

(8) Without limiting sub-section (1), the Regulations may prescribe fees which are required to be prescribed under this Act and which are not otherwise prescribed in this Act.

(9) The Commission may make administrative guidelines, where necessary, in respect of anything required by this Act or Regulations made hereunder.

307. Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on indictment to the penalty specified for the commission of the offence.

Offence provisions.

PART XVIII

Economic Substance Requirements

308. The Economic Substance Act applies to a commercial entity, including a foreign company that is incorporated, registered or continued under this Act.

Application of Economic Substance Act. CAP. 273:01.

PART XIX

Transitional and Miscellaneous Provisions

309.—(1) Subject to sub-sections (2) and (3) where a company is struck under this Act, the Registered Agent and the manager or member shall retain the accounting records for a period of at least 6 years from the date on which the company was struck, dissolved or wound up.

Retention of records after company is struck, dissolved or wound up.

(2) Where a company is wound up and dissolved under this Act, the liquidator who has been appointed shall retain the accounting records referred for a period of at least 6 years from the date on which the company was dissolved.

(3) A person who fails to comply with this section commits an offence.

310. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs

Jurisdiction.

of the ownership of shares, debt obligations or other securities of a company is in Belize.

Declaration by
Court.

311.—(1) A company may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the articles or by-laws of the company.

(2) A person acting on a declaration made by the Court as a result of an application under sub-section (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

Judges in
Chambers.

312. A judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

Transitional
and savings.
CAP. 250.
CAP. 270.

313.—(1) The transitional provisions set out in Schedule II apply in relation to references and expressions under the Companies Act or the International Business Companies Act.

(2) Enactments listed in Schedule II are saved and shall continue to have effect after the commencement of this Act under such time as they are substituted by Regulations made under this Act.

(3) On the commencement of this Act—

(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.

(4) For the purposes of this section, “lawfully done” means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, applied or passed, as the circumstances require.

(5) For the purposes of this section, “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.

(6) Where upon the commencement of this Act, an application or action made under the former Act is pending, such application or action shall be dealt with under the former Act but the grant thereafter shall be subject to this Act.

(7) Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

(8) Any company referred to in sub-section (7) which is compliant with requirements under the relevant enactments hereby repealed, shall be issued a new company number.

(9) On the commencement of this Act, all assets, rights, and properties of the Registries as established in the Companies Act and the International Business Companies Act, shall be transferred to and vested in the Commission without further assurance and the Commission shall have all powers necessary to take possession of, recover and deal with those assets and properties.

CAP. 250.
CAP. 270.

(10) A company that immediately prior to the commencement of this Act was registered under the Companies

CAP. 250.
CAP. 270.

Act or the International Business Companies Act, shall have 6 months from the commencement of this Act within which to comply with the requirements of this Act.

Reference
in other
Enactments.

314. When in any other enactment in force prior to the commencement of this Act, reference is made to the International Business Companies Act or to International Business Companies, that reference shall be deemed to be a reference to the Belize Companies Act or Business Companies, as the case may be.

Amendment of
Schedules.

315. The Commission may, with the approval of the Minister, by order amend the Schedules to this Act in such manner as the Commission considers necessary.

Repeals and
amendments.

316. The enactments set out in the first column of Schedule III to this Act are repealed or amended to the extent specified in the second column.

Commencement.

317. This Act shall come into force on a date appointed by the Minister, by Order published in the *Gazette*.

(2) An Order under sub-section (1) may appoint different dates for the commencement of different provisions of this Act.

SCHEDULE I
[section 245]

Powers of Liquidators

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.
2. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.
3. Power to dispose of any property of the company to a person who is or was related to the company.
4. Power to pay any class of creditors in full.
5. Power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.
6. Power to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company.
7. Power to deal with all questions in any way relating to or affecting the assets or the winding up of the company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.
8. The power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

9. The power to raise or borrow money and grant securities therefor over the property of the company.
10. The power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
11. The power to engage attorneys and other professionally qualified persons to assist that person in the performance of that person's functions.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

1. The power to take possession of, collect and get in the property of the company and for that purpose to take all such proceedings as that person considers necessary.
2. The power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company seal.
3. The power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against that person's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and ratably with the other separate creditors.
4. The power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with the respect of the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.
5. The power to convene meetings of creditors and contributories.
6. The power to do all other things incidental to the exercise of that person's powers.

SCHEDULE II
[section 313]

TRANSITIONAL & SAVINGS PROVISIONS

1.–(1) Where in any enactment the expression “registered under the Companies Act CAP 250 or the International Business Companies Act CAP 270” occurs, the expression, unless the context otherwise requires, shall also refer to incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the commencement date.

(2) 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 also refers, in respect of all transactions, matters or things subsequent to the commencement date, to winding up or dissolution under this Act.

(3) A reference in an enactment to the former Act shall, as regards a transaction, matter or things subsequent to the commencement date, also 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 as unrepealed so far as is necessary to do so to maintain or give effect to the enactment.

(4) For the purposes of this section–

- (a) “enactment” means an Act or regulation or any provision of an Act or regulation; 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 Minister.

SCHEDULE III
[section 316]

REPEALS AND AMENDMENTS

| Short Title | Extent of Repeal or Amendment |
|--|--|
| International Business Companies Act CAP 270 | The whole |
| Companies Act CAP 250 | The whole |
| The Protected Cell Company Act, CAP. 271. | The whole |
| Business Names Act, CAP 247 | <p>Section 2 of the principal Act is amended by inserting the following new terms and definitions in the appropriate alphabetical order –</p> <p>““Belize Companies and Corporate Registry” means the Belize Companies and Corporate Registry established under section 284 of the Belize Companies Act;</p> <p>“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;</p> <p>“electronic form” means any information that is generated, sent, received or stored in media, magnetic form, optical form, computer memory, microfilm, computer generated microfiche or similar device;</p> <p>“online business registry system” means the online system provided by the Belize Companies and Corporate Affairs Registry;”.</p> <p>Section 4 of the principal Act is amended by deleting the words “and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in Schedule 1”.</p> <p>Section 5(1) of the principal Act is repealed and replaced with the following-</p> <p>“(1) Every firm or person required under this Act to be registered shall, using the online business registry system, furnish to the Registrar, the information and documents specified in Schedule I.”.</p> <p>Section 6 of the principal Act is repealed.</p> |

The principal Act is amended by inserting the following new section immediately after section 7-

“Duration and renewal of Certificate of Registration

7A.—(1) Every Certificate of Registration issued under this Act shall be valid for a period of two years from the date of issue of the certificate of Registration and shall be renewed for successive periods, on submission to the Registrar of and the information and documents required under this Act, using the online business registry system and the applicable fees.

(2) Every firm or person renewing a Certificate of Registration shall submit to the Registrar the information and documents required under this Act no later than fourteen days before the expiration of the Certificate of Registration.

(3) Any firm or person who, within the time provided for in sub-section (2) has submitted the information and documents to the Registrar for renewal and whose current Certificate of Registration ceases to be valid while the Registrar considers the submission of the documents and information, shall be deemed to be registered for the purposes of this Act pending the decision of the Registrar as to the renewal of the registration.

(4) Notwithstanding the entry into force of this Act, this section shall come into force on a day appointed by the Commission with the approval of the Minister, by Order published in the *Gazette*.

(5) Every firm or person registered under this Act before the entry into force of this section shall, within six months of the entry into force of this section, apply to renew their Certificate of Registration.

(6) The business name of a firm or person that fails to comply with sub-section (5) shall be removed from the register.”.

Section 8 of the principal Act is repealed and replaced with the following-

“Registration of changes in firm.

8. Whenever a change is made or occurs in any of the information registered in respect of any firm or person, such firm or person shall, within fourteen days after such change, or such longer period as the Registrar may allow, on application being made in any particular case, whether before or after the expiration of such fourteen days, furnish to the Registrar, using the online business registry system, the information specified in Schedule II.”.

Section 13 of the principal Act is repealed and replaced with the following-

“Registrar to file statement and issue Certificate of Registration.

13.(1) On receiving any information required under this Act, the Registrar shall cause the same to be filed, and he shall send, in electronic form, the certificate of the registration to the firm or person registering, and the certificate of registration or a certified copy of the certificate of registration shall be kept at the principal place of business of the firm or individual.

(2) Every firm or individual who fails to keep the certificate of registration or a certified copy of the certificate of registration in accordance with sub-section (1), commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars.”.

The principal Act is amended by inserting the following new section immediately after section 14-

“Refusal
to register.

14A.-(1) The Registrar shall not register a business name of a firm or of an individual-

(a) that has any of the restricted words or phrases, including any derivative or cognate term of those words or phrases, specified in Schedule III; or

(b) which contains any undesirable, profane, indecent or obscene word or symbol.

(2) Subject to sub-section (3), the Registrar shall not register a business name of a firm or individual if that business name is the same or similar to-

(a) a name which is already registered; or

(b) the name of a company registered under the Business Companies Act.

(3) The Registrar may register a business name, in whole or in part, which is similar to business name or the name of a company that is already registered under this Act, if the consent in writing of the first user of the name has been obtained.

(4) Notwithstanding the entry into force of this Act, this section shall come into force on a day appointed by the Commission with the approval of the Minister, by Order published in the *Gazette*.

(5) Every firm or person registered with a business name containing any of the restricted words or phrases, including any derivative or cognate term of those words or phrases, specified in Schedule III shall, within six months of the entry into force of this section, reapply to be registered under this Act.

(6) The business name of a firm or person that fails to reapply for registration in accordance with sub-section (5) shall be removed from the register.”.

The principal Act is amended in section 15-

- (a) in sub-section (1), by deleting the words “to deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business” and substituting the words “to furnish to the Registrar, using the online business registry system, the information specified in Schedule IV”;
- (b) in sub-section (2), by deleting the words “give such notice” and substituting the words “furnish the information required under sub-section (1),”;
- (c) in sub-section (3), by deleting the words “such notice” and substituting the words “information that a firm or individual has ceased to carry on business”; and
- (d) in sub-section (4) by inserting the words “or in electronic form” immediately after the words “registered post”.

The principal Act is amended in section 18 by deleting the words “The Minister may” and substituting the words “The Commission may, with the approval of the Minister,”.

The principal Act is amended by inserting the following new section immediately after section 22-

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| “Amendment of Schedules. | 23. The Commission, with the approval of the Minister, may, by Order published in the <i>Gazette</i> , amend the Schedules.”. |
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The principal Act is amended by repealing the Schedule and substituting the following-

“SCHEDULE I
[section 5]

Information for Registration by an Individual

(1) Business Name

- (2) Business Entity Particulars
- (3) Principal Address of Business
- (4) Name of Individual Owner
- (5) Sex of Owner
- (6) Principal Address of Owner
- (7) Social Security Number
- (8) Date of Birth
- (9) Nationality
- (10) Email Address
- (11) Contact Number

Information for Registration by more than two Individuals

- (1) Business Name
- (2) Business Entity Particulars
- (3) Principal Address of Business
- (4) Name of Individual Owner
- (5) Sex of Owner
- (6) Principal Address of Owner
- (7) Social Security Number
- (8) Date of Birth
- (9) Nationality
- (10) Email Address
- (11) Contact Number

Information for Registration of Business Name by a Company

- (1) Business Name
- (2) Nature of the Business
- (3) Principal Address of the Business
- (4) Name of Company applying for Business Name
- (5) Registration Number of Company.

SCHEDULE II

[section 8]

Information for Changes of a Business Name

- (1) Business Name
- (2) Nature of Change (Transfer of Ownership, Additional Partner, Change of Address, Change of Business Name, Change in Nature of Business, or Change of Agent)
- (3) Social Security Number
- (4) If Applicable –
 - (a) Social Security Number of Additional Partner
 - (b) New Address

- (c) New Business Name
- (d) New Nature of Business
- (e) Name of New Agent

SCHEDULE III
[section 14A(a)]

RESTRICTED WORDS AND PHRASES

Academy
 Ahorra
 Ambulance
 Annuity
 Anonima
 Anonyme
 Arbitrage
 Association
 Assurance
 Assurer
 Asset management
 Banc
 Banco
 Bank
 Banker
 Bankrupt
 Bankruptcy
 Banque
 Belegginfinds(investment fund)
 Betting
 Bingo
 Boledo
 Broker
 Brokerage
 Building Society
 Bureau
 Caja
 Cambio
 Captive
 Chamber of Commerce
 Charitable
 Charity
 Chartered
 Church
 College
 Companies Registry
 Company
 Cooperative

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| Cooperative Society Council Credit Credit Union Currency e-bank E-change Exchange e-commerce e-gaming e-savings Executor Fidelity Fiduciaire Fiduciare Fiduciary Financing Business Fondo Fondos Fondos Mutude Fondos Mutuds Fondos Mutuos Forex Foundation Fund Funding Futures Exchange Gambling Gaming Government Governor Guarantee Guaranteed Hedge HMS IBC Imperial Indemnity Insolvency Insolvent Insurance Insurer i-bank i-financing i-fund |
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| | -gaming i-insurance i-investment i-money services i-trust Investment Management Law Lease Lending Life Limited Partnership Liquidation Liquidator LLC LLP Loan Lottery LP Majesty Money Money Services Mutual Mutual Fund Official Liquidator Official Trustee Partnership Protected Cells Provident Prudential Receiver Receivership Registry Re-insurance Reinsurance Reinsurer Royal Saving Savings and Loans School Sovereign Surety Transmission Trust Trust Company Trust Corporation Trustee |
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| | <p>Trustee Company Underwrite Underwriter Underwriting University .com .org .BZ .net</p> <p style="text-align: center;">SCHEDULE IV <i>[section 15]</i></p> <p>Information for Cessation of a Business by a Registered Firm or Individual</p> <p>(1) Business Name (2) Principal Address of Business (3) Date of Cessation of Business”.</p> |
| <p>Business Names Rules Sub. Leg, 1991 Edn. CAP. 204 p.1</p> | <p>The Schedule of the Business Names Rules is amended by repealing Forms 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11.</p> |
| <p>Limited Liability Partnership Act, CAP 258</p> | <p>Section 2 of the principal Act is amended by-</p> <p>(a) repealing the definition of “prescribed”.</p> <p>(b) repealing the definition of “Registry” and substituting the following- ““Registry” means the Belize Companies and Corporate Registry established under section 284 of the Belize Companies Act;”.</p> <p>(c) repealing the definition of “Regulations” and substituting the following- ““Regulations” means regulations made by the Commission, with the approval of the Minister, for the better carrying out of the provisions of this Act and for prescribing anything that needs to be prescribed;” and</p> <p>(d) inserting the following new terms and definitions in the appropriate alphabetical order –</p> <p>““Commission” means the Financial Services Commission established under section 3 of the Financial</p> |

Services Commission Act;

“Director General” means the person appointed by the Commission under section 8 of the Financial Services Commission Act;

“electronic form” means any information that is generated, sent, received or stored in media, magnetic form, optical form, computer memory, microfilm, computer generated microfiche or similar device;

Section 7(8) of the Principal Act is amended by deleting the word “Minister” and substituting the word “Commission”.

Section 11(2) of the principal Act is amended by deleting the words “intelligible written form” and substituting the words “electronic form”.

Section 17(2) of the principal Act is amended by inserting the words “in electronic form” immediately after the word “Registrar”.

Section 19(1) of the principal Act is amended by deleting the words “the end of February” and substituting the words “June 30”.

Section 22 of the principal Act is amended-

- (a) in sub-section (2) by inserting the words “in electronic form” immediately after the word “Registrar”; and
- (b) in sub-section (3) by inserting the words “in electronic form” immediately after the word “Registrar”.

Section 34 of the principal Act is amended-

- (a) in sub-section (2) by inserting the words “in electronic form to the limited liability partnership or” immediately after the words “sending it”; and
- (b) in sub-section (3) by inserting the words “in electronic form to that partner or” immediately after the words “sending it”.

Section 36 of the principal Act is amended-

- (a) in sub-section (1), by deleting the words “appointed by the Minister” and substituting the words “the Director General”; and
- (b) in sub-section (4), by deleting the word “Minister” and substituting the word “Commission”.

Section 37 of the principal Act is amended-

- (a) in sub-section (1), by deleting the words “The Minister may by Order” and substituting the words “The Commission, with the approval of the Minister, may, by Order”; and
- (b) in sub-section (4), by deleting the words “The Minister may” and substituting the words “The Commission may, with the approval of the Minister,”.

Section 40 of the principal Act is amended by deleting the word “Minister” and substituting the word “Registrar”.

Section 44 of the principal Act is amended-

- (a) in sub-section (1), by deleting the words “The Minister may” and substituting the words “The Commission may, with the approval of the Minister,”; and
- (b) in sub-section (2)(a), by deleting the word “Minister” and substituting the word “Commission”.

Section 45 of the principal Act is amended-

- (a) in sub-section (1), by deleting the words “The Minister may” and substituting the words “The Commission, with the approval of the Minister, may”; and
- (b) in sub-section (2), by deleting the word “Minister” and substituting the word “Commission”.

Section 46 of the principal Act is amended-

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| | <p>(a) in sub-section (1), by deleting the words “The Minister may” and substituting the words “The Commission, with the approval of the Minister, may”; and</p> <p>(b) in sub-section (3), by deleting the word “Minister” and substituting the word “Commission”.</p> |
| <p>Economic Substance Act, CAP 273:01</p> | <p>The principal Act is amended by-</p> <p>(a) deleting the terms “International Financial Services Commission” and “International Financial Services Commission Act” wherever they occur and substituting the terms “Financial Services Commission” or “Financial Services Commission Act”, as the case may be; and</p> <p>(b) deleting the terms “International Business Companies” and “International Business Companies Act” wherever they occur and substituting the terms “Belize Companies” or “Belize Companies Act”, as the case may be.</p> <p>Section 10(3) of the principal Act is amended by deleting the words “section 107” and substituting the words “section 218”.</p> |
| <p>Stamp Duties Act</p> | <p>Section 71(2) of the principal Act is amended by inserting the words “or transfer is pursuant to section 74 of the Belize Companies Act or” immediately after the words “duty if such conveyance”.</p> |