BERMUDA
COMPANIES ACT 1981
AND RELATED LEGISLATION

LAST UPDATED: JULY 2018
As a service to our clients, Conyers Dill & Pearman has prepared this Companies Act Compendium. The Companies Act Compendium contains a consolidated version of the Companies Act 1981, incorporating all amendments to date. The most recent legislative updates include the addition of the Companies (Initial Coin Offering) Regulations 2018, operative 10 July 2018, amendments to the Companies Act 1981 and the Government Fees Regulations 1976, made by the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act, 2018, in force 9 July 2018, consequential amendments to section 55(5) of the Companies Act 1981 made by Schedule 9 to the Land Title Registration Act 2011, in force 2 July 2018, the Government Fees Amendment Regulations 2018 and the Companies and Partnership (Fees) Act 2018 in force 1 April 2018, section 6 of the Companies and Partnership (Fees) Act 2018 is deemed to have come into operation on 22 June 2016, the Exchange Control Amendment Act 2018 and the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017, operative 23 March 2018, the Companies Amendment Act 2018 and the Proceeds of Crime (Miscellaneous) Act 2018 are deemed to have come into operation 21 March 2018.

This compendium also includes the following related legislation as amended:

- Mutual Companies (Non-Application of Companies Act) Regulations 1995
- Government Fees Regulations 1976 (select provisions)
- Companies (Financial Statements and Auditor’s Report) Rules 1995
- Statutory Appointments (Appointed Stock Exchanges, Appointed Jurisdictions, Competent Regulatory Authorities, Generally Accepted Accounting Principles, Appointed General Auditing Standards, and Securities Transfer Agents)
- Exempted Undertaking Tax Protection Act 1966
- Stamp Duties (International Business Relief) Act 1990
- Bermuda Monetary Authority Act 1969 (select provisions)
- Exchange Control Act 1972 (select provisions)
- Exchange Control Regulations 1973 (select provisions)
- Investment Business Act 2003 (select provisions)
- Investment Business (Exemptions) Order 2004 (select provisions)
- Investment Funds Act 2006 (select provisions)

This Compendium does not, however, contain (i) the various forms and filings prescribed by the Act and (ii) The Companies Winding-Up Rules 1982; these are available on request. In addition, further regulations apply to companies carrying on (i) insurance business, (ii) investment fund or investment fund administration business, or (iii) trust business. More information and/or separate consolidations of applicable legislation are available on request.

While every effort has been made to ensure its accuracy, and it is believed that the only errors in the legislation are those contained in the statutes themselves (which errors have been faithfully reproduced), no responsibility is assumed for the content, and reference is made to the original legislation for an authoritative statement of the Companies Act 1981 and Rules, Regulations and Orders and other legislation contained herein.

Conyers Dill & Pearman
Hamilton, Bermuda
Revised: July 2018
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- Companies Amendment Act 1984 (1984:36)
- Companies Amendment Act 1988 (1988:52)
- Attorney General under the Computerization and Revision of Laws Act 1989 (1989:64)
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- Companies Amendment Act 1990 (1990:22)
- Companies Amendment (No. 2) Act 1990 (1990:57)
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Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018 (2018:20)

OTHER RELATED STATUTES, RULES ORDERS AND NOTICES (as amended) (in some cases, only relevant provisions have been included)

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**Mutual Companies (Non-Application of Companies Act) Regulations 1995 (BR42/1995)**


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Prohibited Business Activities

ELEVENTH SCHEDULE (Section 120(1A)) REPEALED SECTION 120(1) SAVINGS PROVISIONS

[Date of Assent 16th July, 1981]
[Operative Date 1st July, 1983]

WHEREAS it is expedient to make better provision for the incorporation, management, administration and winding up of Companies and the consolidation of the law relating to them:

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows –

PART I - INTERPRETATION AND APPLICATION

1. SHORT TITLE AND COMMENCEMENT

This Act may be cited as the Companies Act 1981.

[commencement provisions omitted]

[this Act was brought into operation on 1 July 1983 by BR22/1983]

2. INTERPRETATION

(1) In this Act unless the context otherwise requires -

“appointed day” means the day appointed by the Minister under section 1 for the Act to come into force;

“affiliated company” has the meaning assigned to it by section 86(3);

“appointed digital asset exchange” means such digital asset exchange appointed by the Minister under subsection (9);

“appointed jurisdiction” means a jurisdiction appointed under subsection 10;

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

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

“arrangement” includes a reorganization of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

“attorney” means barrister and attorney;

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

“Bermuda Monetary Authority” means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;
“book and paper” includes minutes, financial statements, accounts, records of account, beneficial ownership register, deeds and writings;

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

“civil penalty” means such civil penalty as may be imposed by the Registrar under the Registrar of Companies (Compliance Measures) Act 2017;

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

“company limited by shares” and “company limited by guarantee” have the meanings assigned to them by paragraphs (a) and (b) of section 5(2);

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

“contributory” has the meaning assigned to it by section 159;

“Court” means the Supreme Court;

“creditors’ voluntary winding up” has the meaning assigned to it by section 206(4);

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

“default fine” has the meaning given in section 280;

“director” includes any person duly elected or appointed as a director of a company, an alternate director and any person occupying the position of director by whatever name called;

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

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

“exempted company” has the meaning assigned to it by section 127;

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

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

“holding company” has the meaning assigned to it by section 86(2);

“Initial Coin Offering” or “ICO” has the meaning given in section 34A;

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

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

“Member” has the meaning assigned to it by section 19;

“members’ voluntary winding up” has the meaning described by section 201;

“memorandum” means the memorandum of association of a company, as originally delivered to the Registrar or as lawfully altered from time to time;
“minimum subscription” has the meaning assigned to it by section 28;

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

“mutual company” has the meaning attached to it by section 152;

“non-resident insurance undertaking” shall have the meaning assigned thereto by section 1 of the Non-Resident Insurance Undertakings Act 1967;

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

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

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

“permit” means a permit issued under section 134;

“permit company” means any company with a valid permit;

“prescribed” means prescribed by statutory instrument made under this Act;

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

“receiver” or “manager” shall have the meaning assigned to them by section 272;

“register” means the register of companies maintained under subsection (1) of section 14;

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

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

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

“subsidiary company” has the meaning assigned to it by section 86;

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

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

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

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

(4) The expressions “shall be liable to a fine” or “shall be liable to imprisonment” when used in this Act shall mean “shall be guilty of a summary offence and shall be liable on conviction to a fine” or “shall be guilty of a summary offence and shall be liable on conviction to imprisonment”, as the case may be, and all fines and terms of imprisonment shall be deemed to be maximum fines or periods of imprisonment, as the case may be.
(5) Where it is stated that a person shall be guilty of contempt of court he shall be deemed to have committed an offence under section 5 of the Administration of Justice (Contempt of Court) Act 1979.

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

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

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

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

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

2A. DELIVERY OF ELECTRONIC RECORDS GENERALLY

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

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

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

(4) Subject to subsection (5), an electronic record of a document is deemed to have been delivered to a person if it is published on a website and the person is sent a notice which includes details of —

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

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

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

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

(5) If there is a requirement that a person have access to a document for a specified period of time, the person must be notified of the publication of the document before the commencement of the period and, subject to subsection (6), the document must be published on the website throughout the whole of the period.

(6) Nothing in subsection (5) shall invalidate the deemed delivery of an electronic copy of a document under subsection (4) if —
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(a) the document is published for at least part of a period; and
(b) the failure to publish it throughout the whole of the period is wholly attributable to circumstances that the person providing the document could not reasonably have been expected to prevent or avoid.

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

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

2B. DELIVERY OF ELECTRONIC RECORDS TO THE REGISTRAR

(1) Notwithstanding section 2A, where there is a requirement in this Act or in any statutory instrument made under this Act for a person to provide a document to the Registrar, the requirement may be met by the delivery to the Registrar of an electronic record of the document in a form and manner determined by the Registrar and in accordance with this section.

(2) For the purposes of subsection (1), “to provide” includes to deliver, send, notify, give notice, forward, submit, apply or make a report to, or to file, register or lodge with.

(3) Notwithstanding section 11 of the Electronic Transactions Act 1999 and any method of authentication required by this Act or by any statutory instrument made under this Act, the Registrar may direct that any electronic record of a document delivered to the Registrar shall be authenticated in the manner that is directed by the Registrar.

(4) Where an electronic record of a document is delivered to the Registrar that does not comply with the requirements of this section, the Registrar may serve on any person by whom the electronic record was delivered a notice indicating in what respect the electronic record does not comply.

(5) Where the Registrar has served a notice under subsection (4) in respect of an electronic record, the electronic record is deemed not to have been delivered unless —

(a) a replacement electronic record that complies with the requirements of this section is delivered to the Registrar within 14 days after service of the notice; or

(b) where there is no replacement electronic record, the requirements of this section have been met otherwise to the satisfaction of the Registrar.

3. APPOINTMENT OF REGISTRAR

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

4. APPLICATION

(1) This Act shall apply to -

(a) all companies registered under it or registered before the appointed day under the Companies (Incorporation by Registration) Act 1970;

(b) all companies limited by shares incorporated by Act in Bermuda prior to or after the appointed day, except to such extent (if any) as may otherwise be expressly provided in the incorporating Act;
(c) all mutual companies incorporated prior to the appointed day to which Part XII applies; and
(d) any overseas company so far as any provision of this Act requires it to apply.

(1A) In respect of –
(a) non-resident insurance undertakings, section 2 and Parts XIII and XIV shall apply to them except those sections in Part XIII relating exclusively to members’ voluntary liquidations and for the purposes of section 2 and Parts XIII and XIV “insurance business” has the meaning assigned to it in the Non-Resident Insurance Undertakings Act 1967;
(b) permit companies, section 2 and Parts III, V, XI and XIII except those sections in Part XIII relating exclusively to members’ voluntary liquidations shall apply to them.

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

(2) Where the provisions of a private Act incorporating a company conflict with the provisions of this Act the provisions of the private Act shall prevail provided that -
(a) where reference is made in the private Act to any provision of an Act repealed by this Act then if there is a provision in this Act corresponding or nearly corresponding to the provision repealed then that provision shall apply;
(b) when reference is made in the private Act to any provision of an Act repealed by this Act and there is no provision in this Act corresponding or nearly corresponding to the provision repealed then that provision shall continue to have effect; and
(c) notwithstanding any provision in the private Act twelve months after the appointed day Parts VI (excepting section 91), VII, VIII, XIII, XIV and XV shall apply to the company.

4A. RESTRICTED BUSINESS ACTIVITIES

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

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

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

(3A) The Minister’s consent given under subsection (1), in relation to an Initial Coin Offering may be made subject to such conditions as the Minister may consider appropriate to impose.

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

(5) [DELETED]

(6) [DELETED]

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

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

(b) the disclosure of information or the transmitting of an application for consent and its accompanying documents to the Bermuda Monetary Authority for the purpose of enabling or assisting that Authority to exercise or perform any functions conferred upon the Authority by the Bermuda Monetary Authority Act 1969.

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

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

NB s. 20(1) of the Companies Amendment Act 2003:

A consent granted by the Minister before the coming into operation of [the Companies Amendment Act 2003] to have objects that enable a company to carry on restricted business activities shall continue to have effect on the same conditions and with the same effect as [before].

4AA. RESTRICTED BUSINESS ACTIVITY RELATING TO CORPORATE LAND HOLDING

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

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

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

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

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

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

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

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

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

(5) Where the Minister revokes his consent under subsections (3)(c) or (4), the company affected shall divest itself of the land for which it had obtained the Minister’s consent under subsection (2) within a period of three years from the date of the Minister’s revocation of his consent.
(6) The policy referred to in subsection (2)—
(a) shall set out the requirements the Minister must consider before determining whether to give his consent under subsection (2); and
(b) shall be published in the Ministry website and be available for inspection at the offices of the Ministry.

4B. PROHIBITED BUSINESS ACTIVITIES

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

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

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

PART II - INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

5. MODE OF FORMING A COMPANY

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

(2) Such a company may be—
(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares held by them, in this Act termed “a company limited by shares”;
(b) a company having the liability of its members limited by the memorandum to such an amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of it being wound up, in the Act termed “a company limited by guarantee”; or
(c) a company not having any limit on the liability of its members, in this Act termed “an unlimited liability company”.

(3) A company limited by guarantee shall only be formed if -
(a) its purpose is to promote art, science, religion, charity, sport, education or any other social or useful purpose and its profits, if any, and other income is to be used in promoting its purposes and no dividends are to be paid to its members;
(b) it is a mutual company or
(c) it is a company that has been exempted by or under an exemption order made under section 10(2) of the Trusts (Regulation of Trust Business) Act 2001.

6. REGISTRATION OF COMPANIES

(1) An application for registration of a company shall be in such form as may be prescribed by rules made under section 288 and shall be accompanied by such documents as the Minister may determine.
(2) Not more than three months prior to an application for registration of a local company the applicant shall publish in an appointed newspaper an advertisement announcing the intention to incorporate the local company specifying the name and stating its proposed objects.

(3) [REPEALED] 151.

(4) The Registrar shall refuse to register a company limited by guarantee if the Registrar is of the opinion that the purpose of the company is not one of the purposes referred to in subsection 5(3) 152.

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

7. REQUIREMENTS OF MEMORANDUM

(1) The memorandum of every company must state -

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

(b) the objects of the company or otherwise that its objects are unrestricted 155;

(bb) the secondary name of the company, if any, within the meaning of section 10A(1) 156;

(c) [DELETED];

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

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

(f) [DELETED];

(g) [REPEALED] 159;

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

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

(a) the amount of share capital with which the company proposes to be registered 161 and the division thereof into shares of a fixed amount; and

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

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

(4A) Where the memorandum of a company is delivered to the Registrar as an electronic record, it shall be authenticated by each subscriber in the manner directed by the Registrar and subsection (4) does not apply. 162

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

8. PROHIBITION OF REGISTRATION OF COMPANIES WITH UNDESIRABLE NAMES

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

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

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

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

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

(d) contains the word “co-operative”;

(e) contains the words “building society”; or

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

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

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

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

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

Provided that in the case of an appeal under subsection (4) the period of default shall not commence until six weeks after the decision of the Court.
Subsections (1), (3) and (4) of section 10 shall apply to a change of name under this section as they apply to a change of name under that section.

9. **POWER TO DISPENSE WITH “LIMITED” IN NAME OF CHARITABLE AND OTHER COMPANIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **CHANGE OF NAME OF A COMPANY**

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

(2) [DELETED].

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

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

(c) issue a certificate of change of name.

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

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

10A. SECONDARY NAME

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

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

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

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

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

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

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

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

(c) issue a certificate of secondary name.

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

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

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

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

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

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

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

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

(2) [REPEALED]

(3) [REPEALED]

(4) [REPEALED]

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

12. **PROCEDURE FOR ALTERATION OF MEMORANDUM**

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

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

(3) An application may be made to the Court for an alteration to the memorandum of a company passed in accordance with subsection (1) to be annulled and where such an application is made the alteration shall not have effect except in so far as it is confirmed by the Court.

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

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

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

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

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

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

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

Provided that no part of the capital of the company shall be expended in the purchase of the interests of dissentient members.

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

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

(b) if such application is made it shall -

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

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

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

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

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

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

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

13. **BYE-LAWS**

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

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

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

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

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

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

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

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

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

(g) [REPEALED] the filing of information, referred to in paragraphs (a), (e) and (f), in a prescribed form.

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

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

[Transitional provision: Every company to which section 13(2A) of the Companies Act 1981 applies shall have a period of six months from the coming into operation of this Act to be in compliance with that section; Companies Amendment Act 2018 operative March 2018]

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

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

(ii) the allotment of shares;

(iii) the making of calls on shares;

(iv) the payment for shares;

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

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

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

(viii) the transfer of shares;

(ix) the declaration and payment of dividends;

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

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

(xii) [DELETED]

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

(xiv) the quorum at meetings of directors;

(xv) the voting rights and restrictions relating to any class of shares in companies limited by shares, or other company having a share capital, and the voting rights and restrictions of members of companies limited by guarantee including mutual companies;
(xvi) the imposition and recovery of all penalties and forfeitures admitting of regulation by bye-laws;
(xvii) the conduct in all other particulars of the affairs of the company, as well as for the application of its funds and profits; and
(xviii) the use of its common seal and any duplicate common seal. 216

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

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

14. REGISTRATION OF COMPANIES

(1) The Registrar shall maintain a register of companies in such form as he shall determine.

(2) The memorandum shall be delivered to the Registrar who, if he is satisfied –

(a) that the company will be in compliance with this Act; and

(b) that, where applicable, the Controller of Foreign Exchange has given permission under the Exchange Control Act 1972 [title 16 item 1] for the issue of shares in the company or the company is exempted under that Act from the requirement for the Controller’s permission,217 shall register the memorandum, issue a certificate of incorporation showing the date of registration and attach to the certificate a facsimile of the memorandum delivered to him.

(3) From the date of the registration of a company the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and power to adopt a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

14A. RE-REGISTRATION OF LIMITED LIABILITY COMPANY AS UNLIMITED LIABILITY COMPANY218

(1) Subject to the provisions of this section, a company which is registered as a company limited by shares may be re-registered as an unlimited liability company in accordance219 with the requirements of this section.

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

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

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

(b) if some of the members are not present in person or by proxy at the meeting, then, if the members present in person or by proxy at the meeting agree and there are produced at the meeting statements in writing from the members not present in person or by proxy stating that they agree.
(4) [REPEALED]\(^{220}\)

(5) The application shall set out such alterations in the company’s memorandum as are requisite in order to conform with the memorandum of a company to be formed as an unlimited liability company and be accompanied by the documents specified in subsection (6).\(^{221}\)

(6) The documents referred to in subsection (5)\(^{222}\) are-

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

(b) a statutory declaration made by a director\(^{223}\) of the company that the persons who have signified their agreement pursuant to subsection (3) constitute the whole membership of the company\(^{224}\)

(c) [REPEALED]\(^{225}\)

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

14B. RE-REGISTRATION OF UNLIMITED LIABILITY COMPANY AS COMPANY LIMITED BY SHARES OR BY GUARANTEE\(^{227}\)

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

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

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

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

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

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

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

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

15. CERTIFICATE OF INCORPORATION TO BE CONCLUSIVE EVIDENCE

No defect in the formalities leading up to the incorporation of a company shall affect the validity of its incorporation and the certificate of incorporation shall be conclusive evidence of the due incorporation of the company and the date of its incorporation.
16. **EFFECT OF MEMORANDUM AND BYE LAWS**

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

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

(3) [REPEALED].

17. **ALTERATIONS IN MEMORANDUM OR BYE LAWS INCREASING LIABILITY TO CONTRIBUTE TO SHARE CAPITAL NOT TO BIND EXISTING MEMBERS WITHOUT CONSENT**

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

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

18. **COPIES OF MEMORANDUM AND BYE LAWS TO BE GIVEN TO MEMBERS**

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

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

19. **DEFINITION OF MEMBER**

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

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

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

20. [REPEALED]

21. **FORM OF CONTRACTS**

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

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

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

(ii) executed under the common seal of the company,
(iii) signed or executed in such other manner as the bye-laws of the company may provide;

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

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

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

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

(4) Where a contract purports to be made by a company or by a person as agent for a company, at a time when the company has not yet been formed, then subject to any agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the company or as agent for it and he shall be personally liable on the contract accordingly.

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

22. **BILLS OF EXCHANGE AND PROMISSORY NOTES**

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of the company by any person acting under its authority and if so endorsed the person signing the endorsement shall not be liable thereon.

23. **EXECUTION OF DOCUMENTS**

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

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

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

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

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

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

24A. **AGREEMENT NOT TO EXERCISE POWERS**

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

**PART III - PROSPECTUSES AND PUBLIC OFFERS**

25. **INTERPRETATION OF EXPRESSIONS RELATING TO PROSPECTUSES**

(1) In this Part unless the context otherwise requires

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

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

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

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

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

(3) For the purposes of this Part of this Act

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

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

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

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

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

   (c) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in the shares becoming available

      (i) in the case of a local company, to more than twenty persons; and
(ii) in the case of an exempted company or a permit company, to more than thirty five persons; or

(d) an offer having a private character; or

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

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

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

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

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

(7) It is hereby declared for the avoidance of doubt that a direction of the Minister given under subsection (5) is not a statutory instrument having legislative effect.

26. COMPANY OFFERING SHARES TO PUBLIC SHALL PUBLISH A PROSPECTUS

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

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

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

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

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

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

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

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

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

27. CONTENTS OF A PROSPECTUS

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

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

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

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

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

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

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

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

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

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

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

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

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

28. MINIMUM AMOUNT REQUIRED TO BE RAISED TO BE STATED IN PROSPECTUS

(1) Every prospectus shall contain the following particulars

(a) the minimum subscription which must be raised by the issue of shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters

(i) the purchase price of any assets purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
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(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

(2) Where a company is not required by this Part to publish and file a prospectus then subsection (1) shall not apply.276277

29. COMPANIES CONTINUOUSLY OFFERING SHARES TO THE PUBLIC

(1)278 Where-

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

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

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

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

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

(e) [DELETED]279

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

30. OFFENCES RELATING TO THE ISSUE OF A PROSPECTUS

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

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

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

31. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

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

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

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

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

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

(2) No person shall be liable under subsection (1) of this section if he proves -
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(a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

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

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

(d) that

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

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

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

(3) Where the prospectus contains

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

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

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

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

32. WHEN EXPERTS ARE NOT LIABLE

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

33. **RESTRICTION ON ALTERATION OF TERMS MENTIONED IN PROSPECTUS**

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

34. **RULES**

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

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

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

**PART IIIA - INITIAL COIN OFFERING**

34A **Interpretation of Part IIIA**

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

“blockchain” means a digital ledger or database of transactions relating to digital assets which are recorded chronologically and capable of being audited;

“Code of Conduct” means a code of conduct issued under section 34N;

“digital asset” means anything that exists in binary format and comes with the right to use it and includes a digital representation of value that—

(a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;

(b) is intended to represent assets such as debt or equity in the promoter;

(c) is otherwise intended to represent any assets or rights associated with such assets; or

(d) is intended to provide access to an application or service or product by means of blockchain; but does not include—

(e) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or

(f) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

“distributed ledger technology” means a database system in which—

(a) information is recorded and consensually shared and synchronised across a network or multiple nodes; and
(b) all copies of the database are regarded as equally authentic;

“electronic” has the meaning given in section 2 of the Electronic Transactions Act 1999;

“expert” includes a technologist, software engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him relating to an Initial Coin Offering;

“FinTech Advisory Committee” means the FinTech Advisory Committee appointed under section 272F;

“Initial Coin Offering” or “ICO” means an offer by a company to the public to purchase or otherwise acquire digital assets;

“ICO offer document” means the document referred to in section 34C;

“ICO platform”, in relation to an Initial Coin Offering, includes a website or an electronic database or other software platform;

“project” means the product or service to be created or developed as set forth in the ICO offer document;

“promoter” means a company that may be an issuer of an ICO offer document or of a digital asset or other persons who were parties to the preparation of the ICO offer document, but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(2) Any reference in this Act to offering digital assets to the public shall, subject to any provision to the contrary contained herein, be construed as including a reference to offering them to any section of the public, and references in this Act or in a company’s bye-laws to invitations to the public to purchase digital assets shall, subject as aforesaid, be similarly construed.

(3) For the purposes of this Part—
(a) a statement included in an ICO offer document shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

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

(4) Subsection (2) shall not be taken as requiring any Initial Coin Offering or invitation to be treated as made to the public if it is—
(a) an offer by the promoter to existing holders of digital assets of the same class as the digital assets comprised in the offer;

(b) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in the digital assets becoming available—
(i) in the case of a local company, to more than 20 persons; and
(ii) in the case of an exempted company or a permit company, to more than 35 persons;

(c) an offer having a private character; or

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

34B Restriction on issuing Initial Coin Offering

Subject to the provisions of section 4A, no person shall issue an Initial Coin Offering in or from within Bermuda unless that person is a company to which this Act applies and is for the time being registered with the Registrar of Companies under this Act.

34C Company offering digital assets to public shall publish an ICO offer document

(1) Subject to subsection (2), no company shall offer digital assets to the public unless prior to such offer it publishes in electronic form an ICO offer document, and prior to or as soon as reasonably practicable after publication of such ICO offer document, the company shall file with the Registrar (in such form as the Registrar may require), a copy signed by or on behalf of all of the directors of the company.

(2) It is not necessary to file an ICO offer document under subsection (1), at any time or in any circumstances, where—

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

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

(c) an appointed stock exchange, appointed digital asset exchange or any competent regulatory authority has received or otherwise accepted an ICO offer document or other document in connection with the Initial Coin Offering to the public.

(3) The Registrar shall not accept for filing a copy of an ICO offer document unless it is accompanied by a certificate signed by an attorney or an officer of the company certifying that the ICO offer document contains the particulars required by section 34D.

(4) The directors of any company and promoters of any Initial Coin Offering that fail to comply with this section shall each be liable to a civil penalty.

34D Contents of an ICO offer document

(1) Every ICO offer document shall contain or there shall be attached thereto documents showing—

(a) the name and the address of the registered office or principal office of the promoters;

(b) the name, description and titles of the officers of the promoter;

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

(d) a description of the project, the proposed timeline for the project including any proposed project phases and milestones;

(e) the amount of money equivalent (in Bermuda dollars) that the Initial Coin Offering is intended to raise;
(f) the disclosure as to the allocation of the amounts intended to be raised amongst the classes of any issuance (pre-sale, post-Initial Coin Offering etc.);

(g) any rights or restrictions on the digital assets that are being offered;

(h) the date and time of the opening and closing of the offering of digital assets;

(i) the general Initial Coin Offering risk warning referred to in section 34G;

(j) a statement as to how personal information will be used.

(2) The ICO offer document shall also comply with any other requirements as may be prescribed by regulations or any Code of Conduct issued in relation to this Part.

(3) Nothing in subsection (1) shall be construed as preventing a promoter from including such other additional information as the promoter considers relevant with respect to the Initial Coin Offering.

34E Companies offering digital assets to the public

(1) Where any company over a period offers digital assets to the public and any of the particulars in an ICO offer document issued by that company ceases to be accurate in a material respect, the company, as soon as reasonably practicable after becoming aware of that fact, shall—

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

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

(2) Each of the directors of any company that fails to comply with this section shall be liable to a civil penalty.

34F Providing a communication facility; cooling-off rights

(1) The promoter shall at all times while the offer is open or suspended, provide an electronic facility that can be used for the following purposes—

(a) for people who access the ICO offer document through the ICO platform—

(i) to make posts relating to the offer;

(ii) to see posts relating to the offer made by others; and

(iii) to ask the company making the offer, or other service provider, questions relating to the offer; and

(b) for the company or other service provider, as the case may be, to make posts responding to questions and posts.

(2) If a person in relation to an Initial Coin Offering makes an application pursuant to the Initial Coin Offering, the person may withdraw the application within three business days after the application is made.

(3) The withdrawal of an application pursuant to subsection (2) can only be made by a method specified on the ICO platform and the ICO platform must include specific instructions and a means to withdraw.

34G General Initial Coin Offering risk warning

(1) The promoter shall ensure that the general Initial Coin Offering risk warning appears in the ICO offer document and prominently on the ICO platform at all times while the offer is open or suspended.

(2) The general Initial Coin Offering risk warning is a statement that includes the following—

(a) information regarding any substantial risks to the project which are known or reasonably foreseeable;
(b) information as to a person’s rights or options if the project which is the subject of the Initial Coin Offering in question does not go forward;

(c) a description of the rights (if any) in relation to the digital assets that are being offered;

(d) information regarding any disclaimer in respect of guarantees or warranties in relation to the project to be developed or any other asset related to the Initial Coin Offering.

34H Identification of persons in relation to ICO offer document

(1) A company shall, in relation to an Initial Coin Offering, ensure that it applies appropriate measures relating to identification and verification of the identity of persons participating in the Initial Coin Offering.

(2) For the purposes of subsection (1), the Minister may make such regulations, subject to the negative resolution procedure, as he considers appropriate.

34I Security of digital assets, confidentiality, disclosure of information

The company shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

34J Offences relating to the issue of an Initial Coin Offering

(1) Any person who—

(a) contravenes section 34B; or

(b) makes or authorizes the making of an untrue statement in an ICO offer document unless he proves either that the statement was immaterial or that at the time he made the statement he had reasonable grounds to believe it was true,

commits an offence.

(2) A person convicted of an offence under subsection (1), shall be liable—

(a) on summary conviction, to a fine not exceeding $50,000 or to imprisonment for a period of one year or to both such fine and imprisonment;

(b) on conviction on indictment, to a fine not exceeding $250,000 or imprisonment for a period of five years or to or to both such fine and imprisonment.

34K Civil liability for mis-statements in ICO offer document

(1) Where an ICO offer document invites persons to purchase digital assets of a company, the following persons shall be liable to pay compensation to all persons who prove that they purchased any digital assets in reliance to his detriment on the ICO offer document for the loss or damage they may have sustained by reason of any untrue statement included therein which is relevant to the Initial Coin Offering that is to say—

(a) every person who is an officer of the company at the time of the issue of the ICO offer document;

(b) every person who has consented to be named and is named in the ICO offer document as an officer or as having agreed to become an officer either immediately or after an interval of time;

(c) a promoter of the Initial Coin Offering; and

(d) every person who has authorized the issue to the public of the ICO offer document.

(2) No person shall be liable under subsection (1) if he proves—
(a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the ICO offer document, and that it was issued without his authority or consent;

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

(c) that, after the issue of the ICO offer document and before any issue of digital assets thereunder, he, on becoming aware of an untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor;

(d) that as regards—

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

(ii) every untrue statement purporting to be a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it—

(A) fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and

(B) he had reasonable ground to believe and did up to the time of the issue of the ICO offer document believe that the person making the statement was competent to make it and had not withdrawn or altered it; and

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

(3) Where the ICO offer document contains—

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

(b) a statement by an expert or contains what purports to be a copy of or extract from a report or valuation of an expert, which the expert has withdrawn or altered, the officers of the company, except any without whose knowledge or consent the ICO offer document was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against the matters set forth in subsection (4).

(4) With respect to subsection (3), the officers of the company referred to in that subsection shall indemnify any such person referred to in that subsection against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the ICO offer document or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.
(5) Notwithstanding subsection (2)(d), a person shall not be deemed for the purposes of that subsection to have authorized the issue of an ICO offer document by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

34L When experts are not liable
A person referred to as an expert in an ICO offer document shall not be liable under section 34J or 34K if—
(a) any untrue statement was not made by him; or
(b) that as regards any untrue statement made by him he was competent to make the statement and—
(i) had reasonable grounds to believe and did believe up to the date of the issue of the ICO offer document that it was true; or
(ii) on becoming aware that the statement was untrue before the issue of the ICO offer document he had given reasonable public notice of his disassociation from the ICO offer document and the reasons therefor.

34M Regulations
(1) The Minister may make such regulations as he considers expedient providing for the purposes of this Part.
(2) Without prejudice to, and without limiting, the generality of subsection (1), regulations made under subsection (1) shall prescribe the minimum required information that must accompany an application for consent for an Initial Coin Offering under section 4A.
(3) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

34N Code of Conduct
(1) The Minister, in consultation with the FinTech Advisory Committee, may issue a Code of Conduct in relation to Initial Coin Offerings for the purpose of providing guidance as to the duties and requirements to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting or otherwise) and sound principles to be observed by persons to whom this Part applies.
(2) Every company, promoter or other person to whom this Part applies shall in the conduct of any Initial Coin Offering comply with the provisions of any Code of Conduct issued by the Minister.
(3) A failure on the part of such person referred to in subsection (2) to comply with the provisions of such Code of Conduct shall be taken into account by the Minister in determining whether the Initial Coin Offering is being conducted in accordance with this Part.

34O Power to obtain information and reports
(1) The Registrar may at any time, for the purpose of ensuring compliance with the provisions of this Part and any conditions imposed under section 4A(3A), require a company—
(a) to provide the Registrar (or such person acting on behalf of the Registrar as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Registrar may reasonably require in order to ensure such compliance;
(b) to provide the Registrar with a report, in such form as may be specified by the Registrar, of any matter about which the Registrar has required or could require that company to provide information pursuant to this Part.
(2) The person to whom such a requirement is made under subsection (1) shall as soon as reasonably practicable thereafter provide the information or report required by the Registrar.

34P Application of Public Access to Information Act 2010

(1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—
   (a) obtains information relating to any application for consent pursuant to section 4A(3A); or
   (b) obtains information pursuant to section 34O; and
   (c) receives a request under the Public Access to Information Act 2010 for such information,
       shall disclose the request or such information so requested.

PART IV - SHARE CAPITAL DEBENTURES AND DIVIDENDS

35. PROHIBITION OF ALLOTMENT UNLESS MINIMUM SUBSCRIPTION RECEIVED

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

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

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

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

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

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

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

36. EFFECT OF IRREGULAR ALLOTMENT

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

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

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

38. **POWER TO PAY CERTAIN COMMISSIONS AND PROHIBITION OF PAYMENT OF OTHER COMMISSIONERS ETC.**

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

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

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

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

39. [REPEALED] 304 305

39A. [REPEALED] 306 307 308 309 310 311 312 313 314 315

39B. [REPEALED] 316 317 318

39C. [REPEALED] 319 320 321 322

40. **APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES**

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

Provided that in the case of an exchange of shares the excess value of the shares acquired over the nominal value of the shares being issued may be credited to a contributed surplus account of the issuing company. 323

(2) Subject to subsection (2A) 324, the share premium account may, notwithstanding anything in subsection (1) be applied by the company
(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off
   (i) the preliminary expenses of the company; or
   (ii) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

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

(2A) [REPEALED]326.

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

Provided that any part of such premiums which do not on the appointed day form an identifiable part of the company’s reserves shall be disregarded in determining the sum to be included in the share premium account.327

41. THE MEANING OF “RESERVE”

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

42. POWER TO ISSUE REDEEMABLE PREFERENCE SHARES

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

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

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

Provided that

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

   (b) the premium, if any, payable on redemption, is provided for out of funds of the company which would otherwise be available for dividend or distribution or out of the company’s share premium account before the shares are redeemed.330

(2) Subject to this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by or determined in accordance with the bye laws of the company; however no redemption of preference shares may be effected if, on the date on which the redemption is to be effected, there are reasonable grounds for believing that the company is, or after the redemption would be, unable to pay its liabilities as they become due.332

(2A) [REPEALED]333
(3) The redemption of preference shares under this section shall not be taken as reducing the amount of the company’s authorized share capital.

(4) On the redemption of preference shares under this section, any amount due to a shareholder may -
   (a) be paid in cash;
   (b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or
   (c) be satisfied partly under paragraph (a) and partly under paragraph (b).

42A. PURCHASE BY A COMPANY OF ITS OWN SHARES

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

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

(3) [REPEALED]

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

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

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

(6A) On the purchase of its own shares under this section, any amount due to a shareholder may -
   (a) be paid in cash;
   (b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or
   (c) be satisfied partly under paragraph (a) and partly under paragraph (b).

(7) Where a company agrees, or is obliged, to purchase any of its shares then
   (a) the company shall not be liable in damages in respect of any failure to purchase any of the shares;
   (b) the court shall not grant an order for specific performance of the purchase if the company shows that to do so would render it insolvent or cause it to breach the provisions of any Act, regulations or license;
   (c) on a liquidation, other shares which carry rights whether as to capital or income which are preferred to the rights attaching to the shares agreed to be purchased, shall be paid in priority to the purchase price.
42B. **TREASURY SHARES**

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

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

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

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

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

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

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

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

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

   (a) hold all or any of the shares;

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

   (c) cancel all or any of the shares.

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

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

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

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

(12) Nothing in this section shall prevent a company from
(a) making an allotment of shares as fully paid bonus shares in respect of shares held by the company as treasury shares; or

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

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

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

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

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

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

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

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

43. POWER TO CONVERT PREFERENCE SHARES INTO REDEEMABLE PREFERENCE SHARES

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

Provided that -

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

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

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

(d) the provisions of subsection (1) of section 42 shall apply to such shares.
44. **POWER OF COMPANY TO ARRANGE FOR DIFFERENT AMOUNTS BEING PAID ON SHARES**

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

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

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

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

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

45. **POWER OF COMPANY LIMITED BY SHARES, OR OTHER COMPANY HAVING A SHARE CAPITAL, TO ALTER ITS SHARE CAPITAL**

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

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

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

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

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

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

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

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

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

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

(2) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.
(3) Whenever a company alters the conditions of its memorandum under subsection (1)(a), then within thirty days thereafter the company shall file a memorandum with the Registrar setting out the altered conditions.

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

46. REDUCTION OF SHARE CAPITAL

(1) A company having share capital if authorized in a general meeting may subject to any order made by the Minister under section 6(4) and to its memorandum and bye-laws on such terms as it may decide reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, by-

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

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

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

(2) No company shall reduce the amount of its share capital -

(a) unless, at a date not more than thirty days and not less than fifteen days before the date on which the reduction of the share capital is to have effect, the company causes a notice to be published in an appointed newspaper stating -

(i) the amount of the share capital as last determined by the company;

(ii) the amount to which the share capital is to be reduced; and

(iii) the date on which the reduction is to have effect; and

(b) if, on the date the reduction is to be effected, there are reasonable grounds for believing that the company is, or after the reduction would be, unable to pay its liabilities as they become due.

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

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

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

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

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

(5) Where a company having share capital reduces the amount of its share capital, then within thirty days after the date as from which the reduction has effect the company shall file a memorandum, with a
If any company fails to comply with subsection (2), (3) or (4) every officer of the company shall be liable to a fine of five thousand dollars and if the company fails to comply with subsection (5) the company shall be liable to a default fine.

47. RIGHTS OF HOLDERS OF SPECIAL CLASSES OF SHARES

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

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

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

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

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

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

(7) If the memorandum or bye-laws of a company with share capital which is divided into different classes of shares makes no provision for varying the rights attached to any class of share and nothing in the memorandum or bye-laws precludes a variation of such rights, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of the bye-laws or other rules of the company relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll; however, in the case of a company having only one member, one member present in person or by proxy constitutes the necessary quorum.

(8) The expression “variation” in this section includes abrogation and the expression “varied” shall be construed accordingly.
48. **NATURE AND TRANSFER OF SHARES**

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

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

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

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

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

49. **TRANSFER BY ESTATE REPRESENTATIVE**

A transfer of the share or other interest of a deceased member of a company made by his estate representative shall, although the estate representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

50. **NOTICE OF REFUSAL TO REGISTER TRANSFER**

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

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

51. **DUTIES OF COMPANY WITH RESPECT TO THE ISSUE OF CERTIFICATES**

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

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

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

52. **CERTIFICATE TO BE EVIDENCE OF TITLE AND EVIDENCE OF GRANT OF PROBATE ETC.**

(1) A certificate specifying any shares or debentures held by any member shall be prima facie evidence of the title of the member to the shares or debentures. The certificate may be –
(a) under the common seal of the company;
(b) signed by at least one person who is a director or the secretary of the company or a person expressly authorized to sign; or
(c) given in such manner as the bye-laws may provide.

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

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

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

54. Dividends and Other Distributions
(1) A company shall not declare or pay a dividend, or make a distribution out of contributed surplus, if there are reasonable grounds for believing that -
   (a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or
   (b) the realisable value of the company’s assets would thereby be less than its liabilities.

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

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

PART V - THE REGISTRATION OF CHARGES

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

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

(3) Subsection (2) of this section shall not apply to charges created before the appointed day. Such charges shall continue to have the priority they had prior to that date:

Provided that any person interested in a charge on the assets of a company created before the appointed day may register that charge but the charge shall continue to have the priority it had prior to registration.
(4) Where a charge is created by a company but is a charge on assets outside Bermuda, the instrument creating or purporting to create the charge may be registered under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

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

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

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

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

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

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

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

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

(6) [REPEALED]

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

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

55A. AMENDMENT OF REGISTER

(1) Where a registered charge is amended by adding or removing one or more persons entitled to the charge or where the interest of one or more persons entitled to the charge is assigned or transferred, any person, including the company, interested in the charge may apply to have such amendment, assignment or transfer registered, and the Registrar shall register the amendment, assignment or transfer in such form as may be prescribed.
(2) The registration of an amendment or an assignment or transfer of an interest in a registered charge under subsection (1) shall not affect the priority of the charge, and the charge shall continue to have priority based on the date that it was registered and not the date that any document effecting the amendment, assignment or transfer was executed or that the amendment, assignment or transfer was registered.

56. CORRECTION OF REGISTER

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

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

57. SPECIAL PROVISION WITH REGARD TO DEBENTURES

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

(a) the total amount secured by the whole series; and
(b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
(c) a general description of the property charged; and
(d) the names of the trustees, if any, for the debenture holders, together with a copy of the deed containing the charge, or, if there is no such deed, a copy of one of the debentures of the series:

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

58. PARTICULARS REQUIRED TO BE REGISTERED WHEN COMMISSION PAID IN RESPECT OF DEBENTURES

Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars sent for registration shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued.

59. ENTRIES OF SATISFACTION AND RELEASE OF PROPERTY FROM CHARGE

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

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company’s property or undertaking,

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

60. REGISTRATION OF APPOINTMENT OF A RECEIVER OR MANAGER

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

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

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

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

61. APPLICATION OF THIS PART TO CHARGES CREATED AND ACQUIRED, BY COMPANY INCORPORATED OUTSIDE BERMUDA

The provisions of this Part shall extend to charges on property in Bermuda which are created, and to charges on property in Bermuda which is acquired, by a company incorporated outside Bermuda.

PART VI - MANAGEMENT AND ADMINISTRATION

62. REGISTERED OFFICE OF COMPANY

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

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

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

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

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

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

(4) If default is made in complying with this section the company or every officer of the company who is in default shall be liable to a default fine.
COMPANIES ACT 1981

62A. SERVICE OF DOCUMENTS

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

63. PUBLICATION OF NAME OF COMPANY

(1) Every company shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

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

64. RESTRICTIONS ON COMMENCEMENT OF BUSINESS

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

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

65. REGISTER OF MEMBERS

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

(a) the names and addresses of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and, in respect of any shares that are not fully paid, specifying the amount paid or agreed to be considered as paid on such shares; and

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

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

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

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

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

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

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

66. INSPECTION OF REGISTER

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

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

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

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

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

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

66A. OFFENCES RELATING TO THE REGISTER OF MEMBERS

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

67. POWER OF COURT TO RECTIFY REGISTER

(1) If -

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

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

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

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

68. REGISTER TO BE EVIDENCE

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

69. PROVISIONAL DIRECTORS AND THEIR POWERS

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

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

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

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

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

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

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

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

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

70. FIRST GENERAL MEETING OF MEMBERS TO ELECT DIRECTORS

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

(2) At least five days’ notice in writing of the statutory meeting shall be given to each member of the company unless the members unanimously agree to waive such notice; the notice shall specify the place, date and hour at which the meeting is intended to be held, and shall state that at the meeting the members present or represented by proxy will elect the first board of directors.
(3) For the purposes of this section “member” shall not include any member who has failed to satisfy any call made upon him which came due to be satisfied before the date on which the general meeting under this section is held.

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

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

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

71. GENERAL MEETINGS

(1) Subject to section 71A, a\textsuperscript{414} meeting of members of a company shall be convened at least once in every calendar year; this meeting shall be referred to as the annual general meeting.

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

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

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

(5)\textsuperscript{415} Where the bye-laws so provide, a general meeting of the members of the company may be held with only one individual present if the requirement for a quorum is satisfied and, where a company has only one shareholder or only one holder of any class of shares, the shareholder present in person or by proxy constitutes a general meeting.

71A. ELECTION TO DISPENSE WITH ANNUAL GENERAL MEETINGS\textsuperscript{416}

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

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

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

(b) for a specified number of years; or

(c) indefinitely:

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

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

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

(5) Where a notice, referred to in subsection (4), is given, sections 71(3), (4) and (5), 72 and 75 shall apply.
(6) If an election under subsection (1) ceases to have effect the company is not obliged to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

72. **FAILURE TO HOLD ANNUAL GENERAL MEETING OR TO ELECT DIRECTORS**

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

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

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

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

73. **POSITION WHEN ELECTION OF DIRECTORS DOES NOT TAKE PLACE**

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

74. **CONVENING OF SPECIAL GENERAL MEETING ON REQUISITION**

(1) The directors of a company, notwithstanding anything in its bye-laws shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene a special general meeting of the company.

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

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

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such directors as were in default.

75. LENGTH OF NOTICE FOR CALLING MEETINGS

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

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

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

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

75A. TELEPHONIC ETC MEETING

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

76. POWER OF COURT TO ORDER MEETING

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

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

77. VOTING AT MEETINGS

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

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

(3) Subject to subsection (5), it shall be lawful for any question proposed for consideration at a general meeting of a company to be decided on a show of hands or by a count of votes received in the form of electronic records and in any such case, and subject to any rights or restrictions for the time being lawfully
attached to any class of shares, every member present in person or by proxy\(^{424}\) at such meeting shall be entitled to one vote and shall cast such vote by raising his hand or by communicating their vote in the form of an electronic record\(^{425}\).

(4) At any general meeting of a company a declaration by the chairman that a question proposed for consideration has, on a show of hands or by a count of votes received in the form of electronic records\(^{426}\), been carried, or carried unanimously or by a particular majority or lost and an entry to that effect in a book containing the minutes of the proceedings of the company shall, subject to subsection (5), be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such question.

(5) Notwithstanding subsection (3), at any general meeting of a company, it shall be lawful, in respect of any question proposed for the consideration of the members, whether before or on the declaration of the result of a show of hands or of a count of votes received in the form of electronic records\(^{427}\) as provided for in subsection (3) for a poll to be demanded by any of the following persons -

(a) the Chairman of such meeting; or

(b) at least three members present in person; or represented by proxy; or

(c) any member or members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the members having the right to vote at such meeting; or

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

(6) Where, in accordance with subsection (5), a poll is demanded, and subject to any rights or restrictions for the time being lawfully attached to any class of shares, every member present in person or by proxy\(^{428}\) at such meeting shall have one vote for each share of which he is the holder or for which he holds a proxy or in the case of a company limited by guarantee he shall have one vote for himself and one vote for each member for whom he holds a proxy and such votes shall be counted in such manner as the bye-laws of the company may provide or, in default of such provision, as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands.

(7) A poll demanded, in accordance with subsection (5), for the purpose of electing a chairman, or on a question of adjournment, shall be taken forthwith and a poll demanded on any other question shall be taken at such time at such meeting as the chairman may direct.

(8) In the case of an equality of votes, whether on a show of hands or by a count of votes received in the form of electronic records or on a poll, the chairman of the meeting at which such show of hands or count of votes\(^{429}\) takes place, or at which such poll is demanded, shall unless the bye-laws of the company otherwise provide, be entitled to a second or casting vote.

(9)\(^{430}\) Nothing contained in this section shall be construed as prohibiting a member who is the holder of two or more shares from appointing more than one proxy to represent him and vote on his behalf, whether on a show of hands or by a count of votes received in the form of electronic records\(^{431}\) or on a poll, at a general meeting of the company or at a class meeting.
77A. RESOLUTION IN WRITING

(1) Subject to subsection (6) and the bye-laws of the company, anything which may be done by resolution of a company in general meeting or by resolution of a meeting of any class of the members of a company, may be done by resolution in writing.

(1A) Subject to the bye-laws of the company, notice of any resolution to be made under subsection (1) shall be given, and a copy of the resolution shall be circulated, to all members who would be entitled to attend a meeting and vote on the resolution in the same manner as that required for a notice of a meeting of members at which the resolution could have been considered, except that any requirement in this Act or in the bye-laws as to the length of the period of notice shall not apply.

(1B) Subject to subsection (1C), a resolution in writing is passed when it is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of —

(a) the members of the company who at the date of the notice represent such majority of votes as would be required if the resolution had been voted on at a meeting of members; or

(b) all the members of the company or such other majority of members as may be provided by the bye-laws of the company.

(1C) The accidental omission to give notice to, or the non-receipt of a notice by, any person entitled to receive notice of a resolution does not invalidate the passing of a resolution.

(2) A resolution in writing may be signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of, the members of a company, or any class thereof, in as many counterparts as may be necessary.

(3) For the purposes of this section, the date of the resolution is the date when the resolution is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of this Act, on behalf of, the last member to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution made in accordance with this section, a reference to such date.

(4) A resolution in writing made in accordance with this section is as valid as if it had been passed by the company in general meeting or by a meeting of the relevant class of members of the company, as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(4A) A resolution in writing made in accordance with this section shall constitute the holding of a meeting where so required by this Act and the date of such meeting shall be the date of the resolution determined in accordance with subsection (3).

(4B) A resolution in writing made in accordance with this section receiving, accepting, adopting or approving financial statements or any other document shall be deemed to be the laying of such statements or other documents before the company in general meeting.

(5) A resolution in writing made in accordance with this section shall constitute minutes for the purposes of sections 81 and 82.

(6) This section shall not apply to:

(a) a resolution passed pursuant to section 89(5); or

(b) a resolution passed for the purpose of removing a director before the expiration of his term of office under section 93.
78. REPRESENTATION OF CORPORATIONS AT MEETINGS

(1) A corporation, whether a company within the meaning of this Act or not, may -

(a) if it is a member of another corporation, being a company within the meaning of this Act, authorise such person or, to the extent expressly permitted by the bye-laws of that company, such persons as it thinks fit to act as its representative or representatives, as the case may be, at any meeting of the company or at any meeting of any class of members of the company, provided that, if more than one person is authorised, the authority shall specify the number and class of shares held by the relevant member in respect of which each such person is authorised to act as such representative;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, authorize such person or persons as it thinks fit to act as its representative or representatives, as the case may be, at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture, trust deed or warrant agreement, as the case may be.

(2) The number of persons a member or creditor of a company may authorized to act as its representative or representatives pursuant to the authorities set out in subsection (1) shall not exceed the number of shares or securities held by that member or creditor, being shares or securities in respect of which there is an entitlement to attend and vote at the relevant meeting.

(3) Each representative authorised pursuant to subsection (1) shall be entitled to exercise the same powers on behalf of the corporation or its nominee which he represents as that corporation or its nominee could exercise as if it were an individual member, creditor or holder of debentures of that other company and, in addition, the right to vote individually.

79. CIRCULATION OF MEMBERS’ RESOLUTION, ETC

(1) Subject to the following provisions of this section it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified, at the expense of the requisitionists unless the company otherwise resolves -

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under the foregoing subsection shall be -

(a) either any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members.

(3) Notice of any such intended resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting.
and notice of any such resolution shall be given to any other member of the company by giving notice of the
general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

80. **CONDITIONS TO BE MET BEFORE COMPANY BOUND TO GIVE NOTICE OF RESOLUTION**

A company shall not be bound under section 79 to give notice of any resolution or to circulate any statement unless -

(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company -

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company’s expenses in giving effect thereto:

Provided that if, after a copy of the requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

81. **MINUTES OF PROCEEDINGS TO BE KEPT**

(1) Every company shall cause minutes of all proceedings of general meetings and of all proceedings of meetings of its directors to be entered in books kept for that purpose and such minutes shall be signed by the person presiding over the proceedings or over the proceedings at which the minutes are approved.

(2) Minutes prepared in accordance with subsection (1) shall be kept by the secretary at the registered office of the company and shall be evidence of the proceedings and until the contrary is proved, the proceedings shall be deemed to have been duly held and convened and the business conducted thereat shall be deemed to be valid.

(3) If a company fails to comply with subsection (1) the company and every officer of the company who is in default shall be liable to a default fine.

82. **INSPECTION OF MINUTE BOOKS**

(1) Minutes of general meetings of a company shall be open for inspection by any member or director of the company without charge for not less than two hours during business hours each day subject to such reasonable restrictions as the company may impose.

(2) Any member or director shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes on the payment of a reasonable charge.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable to a fine of ten dollars and further to a fine of ten dollars for each day there is a default.
(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the minutes or direct that the copies required shall be sent to the persons properly requiring them.

83. KEEPING OF BOOKS OF ACCOUNT

(1) Every company shall cause to be kept proper records of account with respect to –

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

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

(c) the assets and liabilities of the company.

(2) The records of account shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors or a resident representative referred to in section 130(1)(c):

Provided that if the records of account are kept at some place outside Bermuda, there shall be kept at the office of the company in Bermuda such records as will enable the directors or a resident representative referred to in section 130(1)(c) to ascertain with reasonable accuracy the financial position of the company at the end of each three month period, except that where the company is listed on an appointed stock exchange, there shall be kept such records as will enable the directors or a resident representative to ascertain with reasonable accuracy the financial position of the company at the end of each six month period.

(3) If a company fails to comply with subsection (1) the company and every officer of the company shall be liable to a fine of five hundred dollars.

(4) In the case of records of account not being made available for inspection by the directors or a resident representative referred to in section 130(1)(c) the Court may by order compel immediate inspection of such records.

(5) Every company shall keep, for a period of five years from the date on which they were prepared, records of account referred to in subsection (1) and, if applicable, subsection (2).

(6) A company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of section 5 shall be liable on summary conviction to a fine of seven thousand five hundred dollars.

84. FINANCIAL STATEMENTS TO BE LAID BEFORE GENERAL MEETING

(1) The directors of every company shall, in accordance with section 87 and subject to section 88, at such intervals and for such period as this Act and the bye-laws of the company provide lay before the company in general meeting -

(a) financial statements for the period, which shall include -

(i) a statement of the results of operations for the period;

(ii) a statement of retained earnings or deficit;

(iii) a balance sheet at the end of such period;

(iiiA) a statement of changes in financial position or cash flows for the period;

(iv) notes to the financial statements and the notes thereto shall be in accordance with subsection (1A).
(v) such further information as required by this Act and the company’s own Act of incorporation or its memorandum, and its bye-laws; and

(b) the report of the auditor as set out in section 90(2), in respect of the financial statements described in paragraph (a).

(1A) The notes mentioned in subsection (1)(a)(iv) shall include a description of the generally accepted accounting principles used in the preparation of the financial statements which principles may be -

(a) those of Bermuda or a country or jurisdiction other than Bermuda; or

(b) such other generally accepted accounting principles as may be appointed by the Minister under subsection (5) for the purpose of this subsection,

and, where the generally accepted accounting principles used are other than those of Bermuda, the notes shall identify the generally accepted accounting principles so used.

(2) Financial statements shall before being laid before a general meeting of a company be signed on the balance sheet page by a director of the company.

(3) Notwithstanding the provisions of subsection (1) if at a general meeting at which financial statements should be laid the statements have not been so laid, it shall be lawful for the Chairman to adjourn the meeting for a period of up to ninety days or such longer period as the members may agree.

(4) Subject to subsection (3) if any director of a company fails to take all reasonable steps to comply with subsection (1) he shall be liable to a fine of one thousand dollars:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty.

(5) The Minister may, after consultation with the Chartered Professional Accountants of Bermuda, appoint generally accepted accounting principles promulgated by an accounting standard setting body and shall cause the appointment to be published in an appointed newspaper.

85. [REPEALED]

86. DEFINITION OF SUBSIDIARY AND HOLDING COMPANIES

(1) For the purposes of this Act except in Part VIA, a company is a subsidiary of another company only if

(a) it is controlled by -

(i) that other company; or

(ii) that other company and one or more companies each of which is controlled by that other company; or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a subsidiary of that other company,

(2) For the purposes of this Act, a company is the holding company of another only if that other company is its subsidiary.
(3) For the purposes of this Act, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.

(4) For the purposes of this section, a company is controlled by another company or person or by two or more companies only if -

(a) shares of the first-mentioned company carrying more than fifty percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by or for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

87. **RIGHT TO RECEIVE COPIES OF BALANCE SHEET ETC**

(1) Subject to subsection (3) and sections 87A and 87B, a copy of the financial statements of a company, including every document required by law or the bye-laws of the company shall be made available to every member of the company and if such financial statements and other documents are not sent to each member five days before the general meeting any member may move a resolution at the general meeting that it be adjourned for five days:

Provided that this subsection shall not require the making available of the financial statements and other documents to -

(a) any person not entitled to receive notices of general meetings;

(b) more than one of the joint holders of any shares or debentures;

(c) any person whose address is not known to the company.

(2) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be liable to a fine of one hundred dollars, and if, when any person makes a demand for any document with which he is by virtue of subsection (1) of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every officer of the company who is in default shall be liable to a default fine, unless it is proved that person has already made a demand for and been furnished with a copy of the document:

Provided that it shall be a defence to any prosecution for the company or any officer to show that it was not possible to comply with subsection (1) owing to circumstances beyond the control of the company or the officer, as the case may be.

(3) Where a company does not convene an annual general meeting in any one financial year following an election under section 71A-

(a) financial statements as described in section 84(1) in respect of that year shall be made available to every member of the company within 12 months of the end of the year in which an annual general meeting was not held, and the making available of such financial statements to members shall be deemed to be the laying of such statements before the company;

(b) any member or members of the company may, where requirements under paragraph (a) have not been complied with, by notice to the company require the convening of a general meeting to be held within 6 months of the failure to make available financial statements for the purpose of the laying before the company of such financial statements and with respect to such financial statements, section 84(2), (3) and (4) shall apply.
87A. PROVISION OF SUMMARISED FINANCIAL STATEMENTS TO SHAREHOLDERS

(1) A company, the shares of which are listed on an appointed stock exchange need not send financial statements as required by section 87(1) to members, but may instead send them summarised financial statements.

(2) The company shall make a copy of the summarised financial statements available for inspection by the public at the company’s registered office in Bermuda.

(3) The summarised financial statements –

   (a) shall be derived from the company’s financial statements for the relevant period; and

   (b) shall include, in respect of that period –

      (i) a summarised report of the statements referred to in section 84(1)(a)(i), (ii), (iii) and (iiiA);

      (ii) such further information extracted from the financial statements as the board of directors considers appropriate; and

      (iii) a statement in a prominent position that it is only a summarised version of the company’s financial statements and does not contain sufficient information to allow as full an understanding of the financial position, results or operations or changes in financial position or cash flows of the company as would be provided by financial statements.

(4) The summarised financial statements sent to the company’s members shall be accompanied by –

   (a) the auditor’s report on the summarised financial statements prepared in accordance with the generally accepted auditing standards referred to in section 90(2) in respect of the financial statements; and

   (b) a notice informing the member to whom the summarised financial statements are sent how to notify the company that he elects to receive financial statements for the period referred to under section 84 for which the statements are to be prepared or for subsequent periods or both.

(5) In this section, “relevant period” means such period, referred to in section 84, for which financial statements are required to be presented to members in compliance with this Act or the company’s bye-laws.

87B. ASCERTAINMENT OF SHAREHOLDERS’ ELECTION

(1) Where a company sends out summarised financial statements, these statements, together with the auditor’s report and the notice specified in section 87A(4) shall be sent out not less than twenty-one days before the general meeting referred to in section 87(1).

(2) A company shall, subject to section 88, send copies of the financial statements to any member who would otherwise be entitled to receive such statements under section 87(1) within seven days of receipt of the member’s election.

87C. PROVISION OF FULL FINANCIAL STATEMENTS FOR INSPECTION

A company, the shares of which are listed on an appointed stock exchange, that sends summarised financial statements to its members under section 87A(1), shall make a copy of the full financial statements of the company available for inspection by the public at the company’s registered office.
88. **POWER TO WAIVE LAYING OF ACCOUNTS AND APPOINTMENT OF AUDITOR**

(1) Notwithstanding sections 13(2)(c) and (d), 84, 87 and 89 if all members and directors of a company, either in writing or at a general meeting, agree that in respect of a particular interval no financial statements or auditor’s report thereon need be laid before a general meeting or that no auditor shall be appointed then there shall be no obligation to lay financial statements for such period or to appoint an auditor, as the case may be.

Provided that if a general meeting of the company does not take place within 18 months of the agreement reached, any member or members of the company may, by notice to the company, require the holding of a general meeting within 6 months of the notice for the purpose of terminating the agreement.

(2) For the purposes of subsection (1) all the members of a company shall be deemed to have agreed at a general meeting if either:

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

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

89. **APPOINTMENT AND DISQUALIFICATION OF AUDITOR**

(1) The members of a company at the statutory meeting shall subject to section 88 appoint one or more auditors to hold office until the close of the next annual general meeting, and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.

(2) An auditor appointed under subsection (1), and subsequent auditors, shall hold office until a successor is appointed by the members of the company or, if the members fail to do so, until the directors appoint a successor.

(3) A person, other than an incumbent auditor, shall not be capable of being appointed auditor at a general meeting unless notice in writing of an intention to nominate that person to the office of auditor has been given not less than twenty-one days before the general meeting; and the company shall send a copy of any such notice to the incumbent auditor, and shall give notice thereof to the members, either by advertisement in an appointed newspaper or in any other mode provided by the bye-laws of the company, not less than seven days before the general meeting:

Provided that an incumbent auditor may by notice in writing to the secretary of the company waive the requirements of this subsection which shall then not have effect.

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

(3B) Notwithstanding subsection (3A), a person may accept appointment or consent to be appointed as auditor of a company if, within fifteen days after making the request referred to in that subsection, he does not receive a written statement as requested.

(3C) No auditor of a company is in breach of any duty to which he is subject as auditor of that company by reason of his communicating in good faith to the person making the request referred to in subsection (3A) any information or opinion in response to such request.

(4) The directors may fill any casual vacancy in the office of auditor, but while the vacancy continues the surviving or continuing auditor, if any, may act.
(5) The members, by a resolution passed by at least two-thirds of the votes cast at a general meeting of which notice specifying the intention to pass such resolution was given, may remove any auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term:

Provided that, not less than twenty-one days before the date of the meeting, notice in writing of the proposed resolution is given to the incumbent auditor and to the auditor proposed to be appointed.

(5A) An auditor of a company who has resigned, been removed, or whose term of office has expired or is about to expire, or who has vacated office, shall be entitled -

(a) to attend the general meeting of the company at which he is to be removed or his successor is to be appointed;

(b) to receive all notices of, and other communications relating to, that meeting which a member is entitled to receive; and

(c) to be heard at that meeting on any part of the business of the meeting that relates to his duties as auditor or former auditor;

(6) The remuneration of an auditor appointed by the members shall be fixed by the members or by the directors, if they are authorized to do so by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

(7) Subject to section 88 where for any reason no auditor is appointed, the Registrar may, on the application of any member, appoint one or more auditors to hold office for such term as he sees fit and fix the remuneration to be paid by the company for his or their services.

(8) Except as provided in subsection (9), no person shall be appointed as auditor of a company who is an officer or employee of that company or of an affiliated company or who is a partner, employer or employee of any such officer or employee.

(9) Upon the unanimous vote of the members of a company limited by guarantee, other than a mutual company present or represented at the meeting at which the auditor is appointed, an officer or employee of that company or an affiliated company, or a partner, employer or employee of an officer or employee may be appointed as auditor of that company, if he has no personal responsibility for the care of the funds of the company and is not concerned in the day to day management or recording of its finances.

(10) A person appointed as auditor under subsection (9) shall indicate in his report to the members that he is an officer or employee of the company or an affiliated company or a partner, employer or employee of an officer or employee, as the case may be.

(11) Any oral or written statement made under subsection (3A) or (5A) by an auditor or former auditor enjoys qualified privilege.

(12) An appointment as auditor of a person who has not requested a written statement from the former auditor under subsection (3A) is voidable by a resolution of the shareholders at a general meeting.

90. ANNUAL AUDIT

(1) The auditor shall audit any financial statements to be laid pursuant to section 84 as will enable him to report to the members.

(2) Based on the results of his audit under subsection (1) which audit shall be made in accordance with generally accepted auditing standards, the auditor shall make a report to the members.
(3) The generally accepted auditing standards referred to in subsection (2) may be those of Bermuda or a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be appointed by the Minister under subsection (4) for the purpose of this subsection; and where the generally accepted auditing standards used are other than those of Bermuda, the report of the auditor shall identify the generally accepted auditing standards used.

(3A) No action shall lie against an auditor in the performance of any function as an auditor contemplated by this Act except in the instance of -

(a) the company who engaged the auditor to perform such function; or
(b) any other person expressly authorized by the auditor to rely on his work.

(4) The Minister may, after consultation with the Chartered Professional Accountants of Bermuda, appoint generally accepted auditing standards promulgated by an audit standard setting body and shall cause the appointment to be published in an appointed newspaper.

91. ELECTION OF DIRECTORS

1) The affairs of the company shall be managed by at least one director who shall be a person elected in the first place at the statutory meeting and thereafter elected or appointed by the members at each annual general meeting of the company or in such other manner and for such term as may be provided in the bye-laws.

(1A) A maximum number of directors may be determined by the members at a general meeting of the company or in such other manner as may be provided in the bye-laws.

(2) Where a maximum number of directors has been determined in accordance with subsection (1A), a general meeting of a company may authorise the directors of the company to elect or appoint on their behalf a person or persons to act as additional directors up to such maximum.

(2A) Any person may be appointed an alternate director by or in accordance with a resolution of the members or by a director in such manner as may be provided in the bye-laws, and the person so appointed shall have all the rights and powers of the director for whom he is appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of such director.

(2B) An alternate director shall only be a director for the purposes of this Act and shall only be subject to the provisions of this Act insofar as they relate to the duties and obligations of a director when performing the functions of the director for whom he is appointed in the alternative.

(3) So long as a quorum of directors remains in office, unless the bye-laws of a company otherwise provide, any vacancy occurring in the board of directors may be filled by such directors as remain in office. If no quorum of directors remains the vacancy shall be filled by a general meeting of members.

(4) A company may appoint as officers of the company persons who may or may not be directors and who shall be appointed in the manner, and for the period, provided for in the bye-laws of the company.

(5) The directors may, subject to the bye-laws of the company, exercise all the powers of the company except those powers that are required by this Act or the bye-laws to be exercised by the members of the company.
91A. REPRESENTATION OF DIRECTORS BY ANOTHER DIRECTOR

(1) Subject to any express provision to the contrary in the bye-laws of the company, a director of a company may appoint another director of the company to represent him and to vote on his behalf at any meeting of the directors of the company:

Provided that a director so appointed -

(a) shall not be entitled to vote at any such meeting on behalf of the director who appointed him if the director who appointed him is himself present at that meeting; and

(b) may, subject to the provisions of the foregoing paragraph, vote at any such meeting on his own behalf as well as on behalf of the director who appointed him.

(2) Any such appointment as aforesaid -

(a) shall not have effect unless notice thereof is given in writing to the secretary of the company by the director making the appointment;

(b) may be either general or in respect of a particular meeting or meetings specified in the notice of the appointment; and

(c) may be revoked at any time by notice in writing given to the secretary of the company by the director who made the appointment.

91B. DIRECTORS ENTITLED TO RECEIVE NOTICE OF MEETINGS, ETC

(1) The directors of a company shall upon written request deposited at the registered office of the company be entitled to receive notice of, and to attend and be heard at, any or all general meetings.

(2) Notwithstanding section 75 (length of notice for calling meetings) a notice given under subsection (1) shall be valid if in all the circumstances, such notice is reasonable.

92. APPOINTMENT OF SECRETARY

(1) The directors of a company shall appoint a secretary to the company who shall hold office in accordance with the bye-laws.

(2) Anything required or authorized to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

92A. REGISTER OF DIRECTORS AND OFFICERS

(1) Subject to subsection (8), every company shall keep at its registered office a register of its directors and officers and the register shall, with respect to the particulars to be contained in it of those persons, comply with subsection (6).

(2) The company shall, within the period of fourteen days from the occurrence of -

(a) any change among its directors or in its officers; or

(b) any change in the particulars contained in the register,

enter on its register the particulars of the change.

(3) The register shall during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge.
(3A) Any member of the public may require a copy of the register, or any part of it, on payment of the appropriate fee prescribed in the Eighth Schedule.

(4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2) the company which is in default shall be liable in respect of each offence to a default fine.

(5) In the case of a refusal or default, the Court may by order compel an immediate inspection of the register.

(6) The register shall contain the following particulars with respect to each director and officer -

(a) in the case of an individual, his present first name, surname and address; and

(b) in the case of a company, its name and registered office.

(6A) The register of a local company shall state whether any individual possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956.

(7) For the purposes of this section “officer” means:

(a) a person appointed as an officer in accordance with section 91(4) if that person is a director; and

(b) a secretary appointed under section 92(1).

(8) Any company whose objects are wholly and exclusively charitable and which does not solicit funds from the public shall, on filing a copy of its memorandum of association and of its register of directors and officers with the Registrar and on obtaining from the Registrar a confirmation of the filing, be exempt from the provisions of this section.

(9) Notwithstanding any other statutory provision the documents filed for the purposes of subsection (8) shall be treated as confidential by the Minister and any public officer having access to them.

92B. REGISTER OF DIRECTORS

(1) Every company shall file with the Registrar a list of its directors, in such form and together with such fee as prescribed in accordance with this section, and shall notify the Registrar of any change in such directors within thirty days of any such change.

(2) The list of directors must contain the following particulars with respect to each director —

(a) in the case of an individual, his present first name, surname and address; and

(b) in the case of a company, its name and the address of its registered office.

(3) The Registrar shall keep a register in accordance with section 273 containing the information on directors filed in accordance with subsection (1), and such register shall be available for public inspection subject to such conditions as the Registrar may impose and on payment of such fee as may be prescribed.

(4) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a default fine.

93. REMOVAL OF DIRECTORS

(1) Subject to its bye-laws the members of a company may at a special general meeting called for that purpose remove a director:

Provided that notice of any such meeting shall be served on the director concerned not less than fourteen days before the meeting and he shall be entitled to be heard at such meeting:
Provided further that nothing in this section shall have effect to deprive any person of any compensation or damages which may be payable to him in respect of the termination of his appointment as a director or of any other appointment with the company.

(2) A vacancy created by the removal of a director at a special general meeting may be filled at that meeting by the election of another director in his place or in the absence of any such election by the other directors.

94. **UNDISCHARGED BANKRUPT NOT TO TAKE PART IN MANAGEMENT OF A COMPANY**

(1) If any person being an undischarged bankrupt in any country acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court, he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of six months or to a fine of five hundred dollars or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the appointed day acting as a director of that company or taking part or being concerned in its management.

(2) The leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver, and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

95. **A COURT MAY ORDER THAT A CONVICTED PERSON SHALL NOT TAKE PART IN THE MANAGEMENT OF THE AFFAIRS OF A COMPANY**

(1) Where any court convicts any person of an offence relating to the affairs of a company which, in the opinion of such court, involves dishonesty it may order that such person shall not directly or indirectly take part in or be concerned in the management of any company without leave of the Supreme Court.

(2) Section 94(2) shall apply to any application for leave under subsection (1).

(3) The same right of appeal shall lie in respect of an order made under subsection (1) as it does from a sentence of imprisonment.

(4) Any person who contravenes an order of a court made under subsection (1) shall be liable to the punishments set out in section 94(1).

96. **PROHIBITION OF LOANS TO DIRECTORS WITHOUT CONSENT OF MEMBERS**

(1) Without the consent of any member or members holding in the aggregate not less than nine-tenths of the total voting rights of all the members having the right to vote at any meeting of the members544 of the company it shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such person as aforesaid by any other person:

Provided that nothing in this section shall apply -

(a) subject to the next following subsection, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or

(c) to any advance of moneys by a company to an officer or auditor under section 98(2)(c).

(2) Proviso (a) to the foregoing subsection shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either -

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid either-

(i) at or before the next following annual general meeting; or

(ii) in the case of a company that has made an election under section 71A, at or before the next following general meeting, which shall be convened within 12 months of the authorisation of the making of the loan, or the entering into of the guarantee, or the provision of the security,

the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) A loan shall be deemed to be a loan to a director if it is made to -

(a) the spouse or children of a director; or

(b) a company (other than a company which is a holding company or a subsidiary (wherever incorporated) of the company making the loan or, as the case may be, the company entering into guarantee or providing security in connection with a loan made to such person by any other person) which a director, his spouse or children own or control directly or indirectly more than twenty per cent of the capital or loan debt.

(5) For the purposes of this section a loan shall not be deemed to have been made in the ordinary course of business of a company if it has not been made on normal commercial terms in respect of interest rates, repayment terms and security.

(6) This section applies to a mutual company.

97. DUTY OF CARE OF OFFICERS

(1) Every officer of a company in exercising his powers and discharging his duties shall -

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every officer of a company shall comply with this Act, the regulations, and the bye-laws of the company.

(3) [DELETED]
(4) Without in any way limiting the generality of subsection (1) an officer of a company shall be deemed not to be acting honestly and in good faith if —

(a) he fails on request to make known to the auditors of the company full details of —

(i) any emolument, pension or other benefit that he has received or it is agreed that he should receive from the company or any of the company’s subsidiaries, or

(ii) any loan he has received or is to receive from the company or any of its subsidiaries;

(b) he fails to disclose at the first opportunity at a meeting of directors or by writing to the directors —

(i) his interest in any material contract or proposed material contract with the company or any of its subsidiaries;

(ii) his material interest in any person that is a party to a material contract or proposed material contract with the company or any of its subsidiaries.

(5) For the purposes of this section —

(a) a general notice to the directors of a company by an officer of the company declaring that he is an officer of or has a material interest in a person and is to be regarded as interested in any contract with that person is a sufficient declaration of interest in relation to any such contract;

(b) the word material in relation to a contract or proposed contract shall be construed as relating to the materiality of that contract or proposed contract in relation to the business of the company to which disclosure must be made;

(c) an interest occurring by reason of the ownership or direct or indirect control of not more than ten per centum of the capital of a person shall not be deemed material.

(5A) An officer is not liable under subsection (1) if he relies in good faith upon —

(a) financial statements of the company represented to him by another officer of the company; or

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

(6) Any officer of a company who fails to make known a matter he is required to make known under subsection (4) shall be liable to a fine of one thousand dollars.

(7) Nothing in this section shall be taken to prejudice any rule of law or any bye-law restricting officers of a company from having any interest in contracts with the company.

98. EXEMPTION, INDEMNIFICATION AND LIABILITY OF OFFICERS, ETC

(1) Subject to subsection (2), a company may in its bye-laws or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempt such officer or person from, or indemnify him in respect of, any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the officer or person may be guilty in relation to the company or any subsidiary thereof.

(2) Any provision, whether contained in the bye-laws of a company or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempting such officer or person from, or indemnifying him against any liability which by virtue of any rule of law would
otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void.\footnote{560} Provided that -

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force;

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgement is given in his favour or in which he is acquitted or when relief is granted to him by the Court under section 281; and

(c) notwithstanding anything in this section, a company may advance moneys to an officer or auditor for the costs, charges and expenses incurred by the officer or auditor in defending any civil or criminal proceedings against them, on condition that the officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them.\footnote{561}

98A. INSURANCE OF OFFICERS ETC

A company\footnote{562} may purchase and maintain insurance for the benefit of any officer of the company against any liability incurred by him under paragraph (b) of subsection (1) of section 97 in his capacity as an officer of the company or indemnifying such an officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the officer may be guilty in relation to the company or any subsidiary thereof and nothing in this Act shall make void or voidable any such policy.

98B. LIABILITY OF AUDITOR OR OFFICER

(1) Where an auditor or an officer is found liable to any person for damages arising out of the performance of any function as such auditor or officer as contemplated by this Act, then the following provisions of this section shall apply.

(2) An auditor or officer may be liable jointly and severally only if it is proved that he knowingly engaged in fraud or dishonesty.

(3) In any case other than that contemplated by subsection (2) hereof, the liability of the auditor or officer, as the case may be, shall be determined as follows -

(a) the Court shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons alleged by the parties to have caused or contributed to the loss of the plaintiff. In considering the percentages of responsibility, the Court shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between the conduct and the loss claimed by the plaintiff;

(b) the liability of the auditor or officer, as the case may be, shall be equal to the total loss suffered by the plaintiff multiplied by the auditor’s or officer’s, as the case may be, percentage of responsibility as determined under paragraph (a) hereof.

(4) No auditor or officer whose liability is determined under subsection (3) hereof shall have any liability in respect of any judgement entered against any other party to the action.

(5) Except where agreed in writing between the parties, where the liability of an auditor or officer has been determined in accordance with subsection (3) no other person shall have any right to recover from such auditor or officer any portion of any judgment entered against such other person in respect of the action.
PART VIA - BENEFICIAL OWNERSHIP

98C Interpretation of this Part

In this Part—

“beneficial owner” has the meaning given in section 98E;

“beneficial ownership register” means the register referred to in section 98H;

“closed-ended investment vehicle” means a fund that satisfies the requirements in section 3 of the Investment Funds Act 2006, save subsection (2)(b) of that section;

“corporate service provider” means a person licensed to provide corporate service provider business under the Corporate Service Provider Business Act 2012;

“individual” means a natural person;

“legal arrangement” includes a trust, partnership or other similar arrangement;

“legal entity” means a company, limited liability company or other body that is a legal person under the law by which it is governed;

“minimum required information” means the information referred to in section 98H;

“registrable person” means a beneficial owner or relevant legal entity;

“relevant legal entity” in relation to a company means—

(a) any legal entity that is incorporated, formed or registered (including by way of continuation) in Bermuda or elsewhere; and

(b) any legal arrangement,

which would be a beneficial owner of the company if it were an individual.

98D Application of this Part

(1) This Part applies with respect to all companies to which this Act applies except those that are exempted under or pursuant to subsection (2).

(2) The following companies, entities or vehicles, and any subsidiary thereof, are exempted from the application of this Part—

(a) a company whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange;

(b) a closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act 2003 or the Investment Funds Act 2006 or registered, authorised or licensed by a foreign regulator recognised by the Bermuda Monetary Authority;

(c) a permit company;

(d) a financial institution as defined in the Third Schedule to the Bermuda Monetary Authority Act 1969;

(e) any other type of company or entity that is exempted by the Minister by order made by him.

(3) For the purposes of this section, a company (“company S”) is a subsidiary of one or more companies, entities or vehicles described in subsection

(2) if—
(a) such companies, entities or vehicles, separately or collectively, hold more than 75% of the shares or voting rights in company S;  

(b) each such company, entity or vehicle is a member of company S and, separately or collectively, has the right to appoint or remove a majority of its board of directors or other governing body; or  

(c) it is a subsidiary of one or more companies, entities or vehicles each of which is itself a subsidiary of one or more companies, entities or vehicles described in subsection (2).

(4) An order made under subsection (2)(e) shall be subject to the affirmative resolution procedure and may contain such consequential or transitional provisions as the Minister considers necessary or expedient.

COMPANY TO IDENTIFY BENEFICIAL OWNERS

98E Meaning of beneficial owner

(1) In this Part—

“beneficial owner” means—

(a) any individual or individuals who own or control more than 25% of the shares, voting rights or interests in the company through direct or indirect ownership thereof;  

(b) if no such individual or individuals referred to in paragraph (a) exist or can be identified, any individual or individuals who control a company by other means;  

(c) if no such individual or individuals referred to in paragraphs (a) and (b) exist or can be identified, the individual who holds the position of senior manager of the company, and “beneficial ownership” shall be construed accordingly;  

“control by other means” includes the right to appoint or remove a majority of the board of directors of a company and the exercise of control over a company by any means other than control by ownership of any interest;  

“senior manager” means the chief executive, managing or executive director or president of a company or other person holding such senior position in the company by whatever title known.

(2) Shares or voting rights held by an individual or individuals shall be an indication of direct ownership.

(3) Shares or voting rights held—

(a) by a relevant legal entity, which is under the control of an individual or individuals; or  

(b) by multiple relevant legal entities, which are under the control of the same individual or individuals,

shall be an indication of indirect ownership by such individual or individuals.

98F Companies to obtain information regarding beneficial owners

(1) A company to which this Part applies shall take reasonable steps to identify any individual who is a beneficial owner of the company and all relevant legal entities that exist in relation to the company.

(2) If, after having taken reasonable steps to identify the beneficial owners of the company and all relevant legal entities, the company is satisfied that—

(a) no individuals who are beneficial owners are identified; or
(b) if the company was not able to confirm that the individuals identified by it are the beneficial owners,

the company shall keep a record of the actions taken to identify the beneficial owners thereof.

(3) For the avoidance of doubt, reasonable steps include the issue of a notice under section 98G.

98G Company to issue notice to beneficial owners

(1) A company to which this Part applies shall give notice in writing to—

(a) beneficial owners and relevant legal entities identified by the company pursuant to section 98F; and

(b) any person that the company knows or has reasonable cause to believe is a registrable person.

(2) The notice shall require any person to whom it is addressed, within 30 days of the date of receipt thereof—

(a) to state whether or not the person is a beneficial owner or a relevant legal entity in relation to the company; and if so

(b) to confirm or correct any minimum required information that is included in the notice and supply any required information that is missing.

(3) A company is not required to give a notice under subsection (1) if the company knows that the person is not a registrable person or the company has already been informed of the person’s status as a registrable person in relation to it, and has received all the minimum required information.

(4) For the purposes of subsection (1), the company shall be entitled to rely, without further enquiry, on the response of a person to whom a notice in writing has been sent in good faith by the company, unless the company has reasonable cause to believe that a response is misleading or false.

(5) A person to whom a notice under this section is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

BENEFICIAL OWNERSHIP REGISTER

98H Duty to keep beneficial ownership register

(1) Every company to which this Part applies shall establish and maintain in accordance with this Part a beneficial ownership register and shall enter in its beneficial ownership register the minimum required information referred to in subsection (2) in respect of every registrable person.

(2) The minimum required information referred to in subsection (1) that the company shall enter in its beneficial ownership register is as follows—

(a) the registrable person’s full name including, if applicable, any secondary or other name;

(b) where the registrable person is an individual—

(i) his residential address and, if different from his residential address, an address for service;

(ii) his nationality;

(iii) his date of birth;

(c) where the registrable person is a relevant legal entity—
(i) the address of the person’s registered office or principal office;
(ii) the date and place of registration;
(iii) the form of legal entity;
(iv) where applicable, the name of the exchange on which it is listed;
(d) the effective date on which each person was entered into the register as a registrable person of the company;
(e) a statement of the nature and extent of the interest held by each such registrable person;
(f) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficial owners; and
(g) where applicable, the date on which each person who has ceased to be a registrable person in respect of it ceased to be such an owner.

(3) The beneficial ownership register shall be kept at the registered office of the company or after giving written notice to the Registrar of the place at such other place in Bermuda convenient for inspection by the Registrar.

(4) Where the beneficial ownership register is not made available for inspection by the Registrar, the Registrar may exercise the powers conferred on him by Part 3 of the Registrar of Companies (Compliance Measures) Act 2017 in respect of the company and may seek an order from the Court that the company make the beneficial ownership register immediately available for inspection.

98I Company to keep beneficial ownership register up-to-date and current

(1) The beneficial ownership register shall be updated with respect to a change of beneficial ownership which impacts an entry in the register, as soon as practicable after the company is notified of such change but not later than 14 days thereafter.

(2) Where a company to which this Part applies—
(a) becomes aware of a relevant change to the minimum required information that is set forth in its beneficial ownership register in relation to a registrable person; or
(b) has reason to believe that such a relevant change has occurred,
the company shall give notice in writing to that person requesting confirmation, within 30 days from the date of receipt of the notice, of the matters set out in subsection (6).

(3) The notice by the company under subsection (2) shall be given as soon as practicable after the company becomes aware of the relevant change or has reason to believe that such a change has occurred, and shall require confirmation as to any such change and the details thereof.

(4) If the person to whom a notice is sent under subsection (2) confirms the relevant change, the company’s beneficial ownership register shall be updated accordingly.

(5) A company is not required to give a notice under subsection (2) if the minimum required information relating to the change has already been provided to the company by the beneficial owner or another person with knowledge of the minimum required information.

(6) For the purposes of this section, a relevant change occurs where—
(a) a beneficial owner or a relevant legal entity ceases to be a registrable person; or
(b) any other change occurs as a result of which the accuracy of the minimum required information stated with respect to the registrable person in the company’s beneficial ownership register becomes incorrect or incomplete.

(7) A relevant change with respect to a registrable person is considered to have been confirmed if the details, date and particulars of the change have been supplied or confirmed to the company by the registrable person, or by another person with knowledge of the registrable person.

(8) The beneficial ownership register shall not be updated until the relevant change has been confirmed.

98J Disputes regarding beneficial ownership

Where there is a bona fide legal dispute as to the beneficial owner of any shares, voting or other rights or interest in any company to which this Part applies and which is in the process of being adjudicated by a court—

(a) no change shall be recorded in the beneficial ownership register with respect to the beneficial owner of that share, voting right or interest; and

(b) no filing with respect to that change shall be made with the Bermuda Monetary Authority,
prior to the determination of that matter unless the court so orders.

98K Power of Court to rectify beneficial ownership register

(1) Any person who is aggrieved by his inclusion, or lack thereof, on the beneficial ownership register for any reason may apply to the Court for rectification of the beneficial ownership register.

(2) Subsections (2) and (3) of section 67 apply with any necessary modifications with respect to rectification of the beneficial ownership register as those subsections apply in relation to rectification of the register of members.

BENEFICIAL OWNERSHIP INFORMATION TO BE FILED WITH BERMUDA MONETARY AUTHORITY; COMPLIANCE MEASURES

98L Filing of beneficial ownership information with Bermuda Monetary Authority

(1) Subject to subsection (2) and section 289(3) and (4), a company to which this Part applies shall (in such form as the Bermuda Monetary Authority may require) at the time of its registration, continuation in Bermuda or conversion, as the case may be, file with the Bermuda Monetary Authority the minimum required information regarding its beneficial owners.

(2) Where a company engages a corporate service provider which holds an unlimited licence, the filing required under subsection (1) shall occur as soon as practicable but not later than 14 days following such registration, continuation in Bermuda or conversion, as the case may be.

(3) Notification of any change of beneficial ownership of a company shall be filed with the Bermuda Monetary Authority as soon as practicable, but not later than 14 days after the company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.

(4) Where there is a change in respect of any information for the time being filed with the Bermuda Monetary Authority relating to a beneficial owner of a company which would render that information inaccurate, the company shall, in such form as the Bermuda Monetary Authority may require, file with the Bermuda Monetary Authority updated, accurate and current information regarding such change in information as soon as practicable, but not later than 14 days after the company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.
98M Notice by company imposing restrictions

(1) This section applies where—
   (a) a notice under section 98G or 98I is served by a company on a beneficial owner; and
   (b) that person fails, without reasonable excuse, to give the company the information required
       by the notice within the time specified in it.

(2) Where subsection (1) applies, the company may—
   (a) if its bye-laws so provide, issue a warning notice to a person advising of its intention to
       impose restrictions on that person’s shares;
   (b) if its bye-laws so provide, issue a decision notice to a person advising of the imposition of
       restrictions on that person’s shares, provided that such decision notice shall not take effect
       until at least 30 days following the date of receipt of the decision notice; or
   (c) apply to the Court for an order directing that the shares in question be subject to restrictions.

(3) In deciding whether, pursuant to a warning notice, to issue a decision notice or apply to the Court
    under subsection (2), the company, after giving the person the opportunity to make representations,
    shall have regard to the effect of the decision notice or order on the rights of persons in respect of the
    relevant interest, including—
    (a) third parties;
    (b) persons with a security interest over the relevant interest;
    (c) shareholders; and
    (d) other beneficial owners.

(4) If the Court is satisfied that such an order issued pursuant to subsection (2)(c) may unfairly affect
    the rights of third parties in respect of the shares, the Court may, for the purpose of protecting those
    rights and subject to such terms as it thinks fit, direct that such acts by such persons and for such purposes as
    may be set out in the order shall not constitute a breach of the restrictions.

(5) On an application under this section the Court may make an interim order and any such order may
    be made unconditionally or on such terms as the Court thinks fit.

(6) The effect of a decision notice issued by the company or an order made by the Court under this
    section is that the shares in question may be subject to restrictions as follows—
    (a) any transfer of the shares is void;
    (b) no voting rights are exercisable in respect of the shares;
    (c) no further shares may be issued in right of the shares or in pursuance of an offer made to
         their holder;
    (d) no payment may be made of sums due from the company on the shares, whether in respect
        of capital or otherwise.

(7) Where shares are subject to the restriction in subsection (6)(c) or (d), an agreement to transfer any
    right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise
    than in a liquidation), is void.

(8) The provisions of this section are subject to any directions for protection of third parties or otherwise
    given by the Court.
(9) The Court on the application of—
   
   (a) any person aggrieved by any action taken by the company pursuant to this section; or
   
   (b) any person aggrieved in so far as protecting the rights of third parties, persons with a
       security interest over the relevant interest, shareholders or other beneficial owners in respect
       of the relevant interest in respect of which a decision notice has been issued,

may set aside or affirm a notice in whole or in part and give such directions as the Court thinks fit if the
Court is satisfied that the decision notice unfairly affects the protection of the rights of third parties or other
persons.

(10) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under
that section to regulate the practice and procedure on an application or an appeal to the Court under this
section.

98N Power to obtain information and reports

(1) The Registrar may by notice in writing served on a company or any registrable person require the
company or registrable person—

   (a) to provide the Registrar (or such person acting on behalf of Registrar as may be specified in
       the notice), at such time or times or at such intervals or in respect of such period or periods
       as may be so specified, with such information as the Registrar may reasonably require for
       the performance of his functions;

   (b) to provide the Registrar with a report, in such form as may be specified in the notice, of any
       matter about which the Registrar has required or could require that company or registrable
       person to provide information pursuant to this Part.

(2) The person to whom a notice is served under subsection (1) shall within 30 days of receipt of such
notice provide the information requested by the Registrar.

98O Offences

(1) In this Part, where any person—

   (a) contravenes or fails without reasonable excuse to comply with any provision thereof the
       person shall be liable on summary conviction to a fine not exceeding $5,000;

   (b) knowingly provides false information to the Registrar or the Bermuda Monetary Authority,
       the person shall be liable on summary conviction to a fine not exceeding $50,000.

(2) It shall be a defence for the person to show that he took reasonable steps to identify beneficial
owners for the purposes of this Part.

(3) Where an offence under subsection (1) committed by a body corporate is proved to have been
committed with the consent or connivance of an officer of the body corporate, the officer as well as the body
corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

MISCELLANEOUS

98P Confidentiality

(1) Subject to section 98Q, a requirement imposed by or under this Part has effect despite any obligation
as to confidentiality or other restriction on the disclosure of beneficial ownership information imposed by
statute, contract or otherwise.
(2) Accordingly, a disclosure made or the sharing of beneficial ownership information in accordance with this Part does not breach—
   (a) any obligation of confidence in relation to the beneficial ownership information so disclosed; or
   (b) any other restriction on access to or disclosure of the beneficial ownership information so accessed (however imposed).

(3) Compliance by a person with any requirement under this Part to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Part.

(4) For the avoidance of doubt, nothing in this section shall be construed as restricting the exercise of power by the Registrar under section 18(3) of the Registrar of Companies (Compliance Measures) Act 2017.

98Q Privileged information

A person shall not be required under this Part to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Court.

98R Application of Public Access to Information Act 2010

(1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—
   (a) obtains information relating to beneficial ownership directly or indirectly for the purposes of, or pursuant to, this Part; and
   (b) receives a request under the Public Access to Information Act 2010 for such information relating to beneficial ownership information,

shall disclose the request or such beneficial ownership information so requested.

98S Application of Personal Information Protection Act 2016

Nothing in this Part authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

98T Other provisions concerning beneficial ownership or registers etc. not affected

(1) This Part does not, unless it is otherwise expressly provided to the contrary, limit or otherwise restrict any other statutory provision concerning any requirement for any person with an interest in a company to provide information relating to beneficial ownership.

(2) Nothing in this Part, unless it is otherwise expressly provided to the contrary, shall be construed as affecting any provisions relating to the use of licensed corporate service providers or Bermuda Monetary Authority consent requirements regarding the issue or transfer of securities or interests.

(3) Nothing in this Part, unless it is otherwise expressly provided to the contrary, affects the requirement under this Act or any other enactment for a company to which this Act applies to keep any other register.
98U Notices

(1) For the purposes of this Part, any notice, direction or other document (hereinafter referred to in this section as “document”) required or authorised by or under this Part to be given or sent to or served on any person shall be set out in a document in writing which may be served either—
   (a) by delivering it to that person;
   (b) by leaving it at his proper address;
   (c) by sending it by post to that address;
   (d) by sending it to him by facsimile or electronic mail or other similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as sent or served when it is received by him in a legible form; or
   (e) by any other method that provides proof of delivery or service,

and where the person is a body corporate the document may be delivered, by any of those means, to the Secretary or other appropriate person in respect of that body corporate.

(2) For the purposes of this section the proper address of any person shall, in the case of a body corporate, be the registered or principal office of that body corporate, and in any other case, shall be the last known address of the person.

(3) No document required by this Part to be given or sent to the Registrar or the Bermuda Monetary Authority or any other person shall be regarded as given or served until it is received.

(4) For the purposes of this Part, a document shall be taken to have been received by the person in relation to whom it was sent—
   (a) where it was delivered to him personally, on the day of delivery;
   (b) where it was sent to him by post at his address on the day on which he acknowledges receipt or, if no such acknowledgement was received from him, it shall, unless it is shown to the contrary, be deemed to have been received by him—
      (i) seven working days after despatch if posted to an address within Bermuda; and
      (ii) fifteen working days after despatch if posted to an address outside of Bermuda;
   (c) by sending it to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

(5) If the making of the transmission for purposes of subsection (4)(c) has been recorded in the computer or information processing system of the company or its representative it shall be presumed, unless the contrary is proved, that the transmission—
   (a) was made to the person recorded in that system as receiving it;
   (b) was made at the time recorded in that system at the time of delivery;
   (c) contained the information recorded on that system in respect of it.

(6) For the avoidance of doubt, notices, directions or documents that are delivered under this Part are not statutory instruments for the purposes of the Statutory Instruments Act 1977.
Section 22  Transitional

(1) In this section—

“Authority” means the Bermuda Monetary Authority;

“company” means a company to which Part VIA of the Companies Act 1981 applies;

“existing” in relation to a company or a limited liability company, means a company or limited liability company which exists on the date of the coming into operation of sections 4 and 12 of the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017;

“limited liability company” means a limited liability company to which Part 7A of the Limited Liability Company Act 2016 applies;

“minimum required information” means the information referred to in section 98H of the Companies Act 1981 with respect to a company and in section 65F of the Limited Liability Company Act 2016 with respect to a limited liability company;

“Registrar of Companies” has the meaning given in section 3 of the Companies Act 1981;

“the Act” means the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017.

(2) An existing company or a limited liability company shall update or verify as the case may be (in such form and manner as the Bermuda Monetary Authority may direct) the minimum required information relating to beneficial owners thereof within the period of six months from the date of the coming into operation of this section.

(3) The Minister responsible for the Registrar of Companies may by order subject to the negative resolution procedure extend the period set forth in subsection (2).

PART VII - ARRANGEMENTS, RECONSTRUCTIONS, AMALGAMATIONS AND MERGERS

99. POWER TO COMPROMISE WITH CREDITORS AND MEMBERS

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

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members of the company or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made.
(4) If a company makes default in complying with subsection (3), the company and every officer of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of ten dollars for each copy in respect of which default is made.

100. INFORMATION AS TO COMPROMISES WITH CREDITORS AND MEMBERS

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 99 there shall -

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company’s directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of one thousand dollars, and for the purpose of this subsection any liquidator of the company, and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine of two hundred dollars.

101. PROVISIONS FOR FACILITATING RECONSTRUCTION OF COMPANIES

(1) Where an application is made to the Court under section 99 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the Court may, subject to subsection (2), either by the order
sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the
following matters -

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

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

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

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

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

(f) such incidental, consequential and supplemental matters as are necessary to secure that the
reconstruction shall be fully and effectively carried out.

(2) No order shall be made under subsection (1) for the transfer to the transferee company of the whole
or any part of the undertaking or of the property or liabilities of any transferor company unless notice of the
application for the sanctioning of the compromise or arrangement of which the order is to form a part is
given in writing to the Minister and an affidavit signifying the consent of the Minister to the making of the
order has been lodged with the Court.

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

(4) Where an order is made under this section, every company in relation to which the order is made
shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making
of the order, and if default is made in complying with this subsection, the company and every officer of the
company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of two
hundred dollars.

(5) In this section the expression “property” includes all assets, rights and powers of every description,
and the expression “liabilities” includes duties.

102. POWER TO ACQUIRE SHARES OF SHAREHOLDERS DISSenting FROM SCHEME OR
CONTRACT APPROVED BY MAJORITY

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in
this section referred to as “the subject company”) to another company, whether a company within the
meaning of this Act or not (in this section referred to as “the transferee company”), has, within four months
after the making of the offer in that behalf by the transferee company been approved by the holders of not
less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the
date of the offer by, or by a nominee for, the transferee company or its subsidiary, the transferee company
may, at any time within two months beginning with the date on which such approval is obtained, give
notice to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the
transferee company shall, unless on an application made by the dissenting shareholder within one month
from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to
acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the subject company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares, other than those already held as aforesaid, whose transfer is involved, the foregoing provisions of this subsection shall not apply unless

(a) the transferee company offers the same terms to all holders of the shares, other than those already held as aforesaid, whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares, other than those already held as aforesaid, whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then -

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement, give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may within three months from the giving of the notice to him, himself give notice requiring the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) of this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the subject company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the subject company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, the subject company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the subject company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
(5) In this section the expression “dissenting shareholder” includes a shareholder who has not assented to scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

103. HOLDERS OF NINETY-FIVE PERCENT OF SHARES MAY ACQUIRE REMAINDER

(1) The holders of not less than ninety-five percent of the shares or any class of shares in a company (hereinafter in this section referred to as the “purchasers”) may give notice to the remaining shareholders or class of shareholders of the intention to acquire their shares on the terms set out in the notice. When such a notice is given the purchasers shall be entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal under subsection (2):

Provided that the foregoing provisions of this subsection shall not apply unless the purchasers offer the same terms to all holders of the shares whose acquisition is involved. 575

(2) Any shareholder to whom a notice has been given under subsection (1) may within one month of receiving the notice apply to the Court to appraise the value of the shares to be purchased from him and the purchasers shall be entitled to acquire the shares at the price so fixed by the Court.

(3) Within one month of the Court appraising the value of any shares under subsection (2) the purchasers shall be entitled either -

(a) to acquire all the shares involved at the price fixed by the Court; or

(b) cancel the notice given under subsection (1).

(4) Where the Court has appraised any shares under subsection (2) and the purchasers have prior to the appraisal acquired any shares by virtue of a notice under subsection (1) then within one month of the Court appraising the value of the shares if the price of the shares they have paid to any shareholder is less than that appraised by the Court they shall either -

(a) pay to such shareholder the difference in the price they have paid to him and the price appraised by the Court; or

(b) cancel the notice given under subsection (1) and return to the shareholder any shares they have acquired and the shareholder shall repay the purchasers the purchase price.

(5) No appeal shall lie from an appraisal by the Court under this section.

(6) The costs of any application to the Court under this section shall be in the discretion of the Court.

(6A) 576 Where the purchaser is entitled and bound to acquire shares pursuant to subsection (1) or has determined in accordance with subsection (3)(a) to proceed to acquire all the shares involved at the price fixed by the Court, on the expiration of one month from the date on which the notice was given, or, if an application to the Court to appraise the value of the shares to be purchased is then pending, from the date that application has been disposed of, the purchaser may-

(a) transmit a copy of the notice to the subject company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the purchaser and on its own behalf by the purchaser; and

(b) pay or transfer to the subject company the amount or other consideration representing the price payable by the purchaser for the shares which by virtue of this section the purchaser is entitled to acquire,

whereupon the subject company shall register the purchaser as the holder of those shares.
(6B) Any sums received by the subject company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

(7) In this section-

“price” shall include not only monetary price but also the monetary value of any shares or other securities offered by the purchasers in exchange for the shares to be acquired.

104. AMALGAMATION OF COMPANIES

(1) Two or more companies which are registered in Bermuda may subject to section 4A amalgamate and continue as one company:

Provided that if the amalgamated company is to be a local company it shall comply with the Third Schedule.

(2) [DELETED]

104A. AMALGAMATION OR MERGER OF EXEMPTED COMPANY AND FOREIGN CORPORATION AND CONTINUATION AS AN EXEMPTED COMPANY

(1) One or more exempted companies and one or more bodies incorporated outside Bermuda (each such body hereinafter in this section and in sections 104B and 104D referred to as a “foreign corporation”) may-

(a) amalgamate and continue as an exempted company registered in Bermuda; or

(b) merge, and the surviving company continue as an exempted company registered in Bermuda,

(2) A foreign corporation shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to amalgamate or merge and for the surviving company to continue as an exempted company registered in Bermuda, and shall file with the Registrar documentary proof of such authorizations.

(2A) In respect of a merger, a foreign corporation shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to merge and for the surviving company to continue as an exempted company registered in Bermuda, and shall file with the Registrar documentary proof of such authorizations.

(3) [DELETED]

(4) The provisions of sections 105 to 109, mutatis mutandis, apply to-

(a) an amalgamation under this section in the same way as they apply to an amalgamation under section 104; or

(b) a merger under this section in the same way as they apply to a merger under section 104H.

(5) [DELETED]

104B. AMALGAMATION OR MERGER OF EXEMPTED COMPANY AND FOREIGN CORPORATION AND CONTINUATION AS A FOREIGN CORPORATION

(1) One or more exempted companies and one or more foreign corporations may-
(a) amalgamate and continue as a foreign corporation (in this section and section 104C referred to as “the amalgamated corporation”); or

(b) merge and the surviving company continue as a foreign corporation (in this section and section 104C referred to as “the surviving corporation”),

to which the laws of the jurisdiction in which it is proposed that the amalgamated corporation or surviving corporation will continue (in this section and section 104C referred to as “the foreign jurisdiction”) shall apply.

(2) An exempted company shall not amalgamate or merge 602 pursuant to subsection (1) unless -

(a) an officer of such company has made a statutory declaration to the effect that there are reasonable grounds for believing that -

(i) such company is, and the amalgamated corporation or surviving corporation 603 will be, able to pay its liabilities as they fall due;

(ii) the realizable value of the amalgamated corporation’s assets or surviving corporation’s assets 604 will not be less than the aggregate of its liabilities and issued share capital and share premium account of all classes; and

(iii) either no creditor of such company will be prejudiced by the amalgamation or merger, or 605 adequate notice has been given in accordance with section 104D(4) to all known creditors of such company and no creditor objects to the amalgamation or merger 606 otherwise than on grounds that are frivolous or vexatious;

(b) an irrevocable deed poll is executed by such company and its directors, pursuant to which -

(i) such company and each of its directors may be served with legal process in Bermuda in any proceeding arising out of actions or omissions of such company occurring prior to the amalgamation or merger 607, and provision is made for the appointment of a person within Bermuda as agent for such company for the service of process for a period of not less than three years from the effective date of the amalgamation or merger 608 and for a signed acceptance of the appointment; or

(ii) such company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such company and such directors submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;

(c) each foreign corporation which is amalgamating or merging 609 has obtained all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered to enable it to so amalgamate or merge 610;

(d) 611 the foreign jurisdiction is -

(i) an appointed jurisdiction; or

(ii) approved by the Minister, upon application by the company for the purpose of the amalgamation of the company with a foreign corporation and continuance as a foreign corporation; or

(iii) 612 in respect of a merger, approved by the Minister, upon application by the company for the purpose of the merger of the company with a foreign corporation and the continuance of the surviving corporation as a foreign corporation;
(e) not more than three months prior to the effective date of the amalgamation or merger -

(i) each exempted company which is amalgamating or merging shall advertise in an appointed newspaper; and

(ii) each foreign corporation which is amalgamating or merging shall advertise in a national newspaper in the jurisdiction in which it was incorporated or is presently registered, its intention to amalgamate and continue as a company in the foreign jurisdiction or merge and the surviving corporation to continue as a company in the foreign jurisdiction.

104C. DOCUMENTS TO BE FILED ON AMALGAMATION OR MERGER AND CONTINUATION AS A FOREIGN CORPORATION

(1) An exempted company shall not amalgamate or merge pursuant to section 104B unless on or before the effective date of the amalgamation or merger such company files with the Registrar a notice of the amalgamation or merger which shall contain or have attached thereto the following information:

(a) the effective date of the amalgamation or merger;
(b) the name of the foreign jurisdiction;
(c) the address of the registered office or the principal business address of the amalgamated corporation or surviving corporation in the foreign jurisdiction;
(d) a copy of the statutory declaration required pursuant to section 104B(2)(a); and
(e) a copy of the irrevocable deed poll required pursuant to section 104B(2)(b); and
(f) a statement as to whether the company intends to amalgamate or merge.

(2) Within thirty days after the date of the issue thereof, the amalgamated corporation or surviving corporation continuing as a result of an amalgamation or merger pursuant to section 104B shall file with the Registrar a copy of the certificate of amalgamation or merger issued by the appropriate authority of the foreign jurisdiction, or, if no such certificate of amalgamation or merger is issued, such other documentary evidence of the amalgamation or merger as shall be issued by such authority.

(3) The documents filed with the Registrar pursuant to subsections (1) and (2) shall be open to public inspection.

104D. PROVISIONS APPLICABLE TO AMALGAMATION OR MERGER AND CONTINUATION AS A FOREIGN CORPORATION

(1) The provisions of sections 105 to 107 shall apply, with the necessary changes, to an amalgamation or merger pursuant to section 104B in the same way as they apply to an amalgamation pursuant to section 104 or a merger pursuant to section 104H, except that the provisions of section 106 shall apply only to amalgamating or merging exempted companies.

(2) The effect of an amalgamation or merger pursuant to section 104B shall be the same as in the case of an amalgamation pursuant to section 104A or a merger pursuant to section 104H, except insofar as the laws of the foreign jurisdiction otherwise provide.

(3) The effective date of an amalgamation or merger pursuant to section 104B shall be the date that the amalgamation or merger is effective pursuant to the laws of the foreign jurisdiction.

(4) For the purposes of section 104B(2)(a), adequate notice is given if -
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(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1,000.00; and

(b) notice is published in an appointed newspaper stating that such company intends to amalgamate or merge with any specified exempted companies or one or more specified foreign corporations, or both, and that a creditor of such company may object to the amalgamation or merger within thirty days from the date of the notice.

104E. [REPEALED]

104F. [REPEALED]

104G. [REPEALED]

104H. MERGER OF COMPANIES

Two or more companies which are registered in Bermuda may merge and their undertaking, property and liabilities shall vest in one of such companies as the surviving company (the “surviving company”):

Provided that if the surviving company is to be a local company it shall comply with the Third Schedule.

105 AMALGAMATION AGREEMENT OR MERGER AGREEMENT

(1) Each company proposing to amalgamate or merge shall enter into an agreement setting out the terms and means of effecting the amalgamation or merger and, in particular, setting out-

(a) in respect of an amalgamation, the provisions that are required to be included in the memorandum of the amalgamated company;

(b) in respect of a merger, any proposed amendments to the memorandum of the surviving company, or if none are proposed, a statement that the memorandum of the surviving company immediately prior to the merger shall be its memorandum after the merger;

(c) the name and address of each proposed director of the amalgamated or surviving company;

(d) the manner in which the shares of each amalgamating or merging company are to be converted into shares or other securities of the amalgamated or surviving company;

(e) if any shares of an amalgamating or merging company are not to be converted into securities of the amalgamated or surviving company, the amount of money or securities that the holders of such shares are to receive in addition to or instead of securities of the amalgamated or surviving company;

(f) the manner of payment of money instead of the issue of fractional shares of the amalgamated or surviving company or of any other securities which are to be received in the amalgamation or merger;

(g) in respect of an amalgamation, whether the bye-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed bye-laws;

(h) in respect of a merger, any proposed amendments to the bye-laws of the surviving company or, if none are proposed, a statement that the bye-laws of the surviving company immediately prior to the merger shall be its bye-laws after the merger; and

(i) details of any arrangements necessary to perfect the amalgamation or merger and to provide for the subsequent management and operation of the amalgamated or surviving company.
If shares of one of the amalgamating or merging companies are held by or on behalf of another of
the amalgamating or merging companies, the amalgamation or merger agreement shall provide for the
cancellation of such shares when the amalgamation or merger becomes effective without any repayment of
capital in respect thereof, and no provision shall be made in the agreement for the conversion of such into
shares of the amalgamated or surviving company.

106. SHAREHOLDER APPROVAL

(1) The directors of each amalgamating or merging company shall submit the amalgamation
agreement or merger agreement for approval to a meeting of the holders of shares of the amalgamating or
merging company of which they are directors and, subject to subsection (4), to the holders of each class of
such shares.

(2) A notice of a meeting of shareholders complying with section 75 shall be sent in accordance with
that section to each shareholder of each amalgamating or merging company, and shall -

(a) include or be accompanied by a copy or summary of the amalgamation agreement or
merger agreement; and

(b) subject to subsection 2A, state-

(i) the fair value of the shares as determined by each amalgamating or merging company; and

(ii) that a dissenting shareholder is entitled to be paid the fair value of his shares.

(2A) Notwithstanding subsection 2(b)(ii), failure to state the matter referred to in that subsection does not
invalidate an amalgamation or merger.

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

(4) The holders of shares of a class of shares of an amalgamating or merging company are entitled to
vote separately as a class in respect of an amalgamation or merger if the amalgamation agreement or
merger agreement contains a provision which would constitute a variation of the rights attaching to any
such class of shares for the purposes of section 47.

(4A) The provisions of the bye-laws of the company relating to the holding of general meetings shall
apply to general meetings and class meetings required by this section provided that, unless the bye-laws
otherwise provide, the resolution of the shareholders or class must be approved by a majority vote of three-
fourths of those voting at such meeting and the quorum necessary for such meeting shall be two persons at
least holding or representing by proxy more than one-third of the issued shares of the company or the class,
as the case may be, and that any holder of shares present in person or by proxy may demand a poll.

(5) An amalgamation or merger agreement shall be deemed to have been adopted when it has been
approved by the shareholders as provided in this section.

(6) Any shareholder who did not vote in favour of the amalgamation or merger and who is not
satisfied that he has been offered fair value for his shares may within one month of the giving of the notice
referred to in subsection (2) apply to the Court to appraise the fair value of his shares.

(6A) Subject to subsection (6B), within one month of the Court appraising the fair value of any shares
under subsection (6) the company shall be entitled either-

(a) to pay to the dissenting shareholder an amount equal to the value of his shares as appraised
by the Court; or
(b) to terminate the amalgamation or merger\(^665\) in accordance with subsection (7).

(6B)\(^666\) Where the Court has appraised any shares under subsection (6) and the amalgamation or merger\(^667\) has proceeded prior to the appraisal then, within one month of the Court appraising the value of the shares, if the amount paid to the dissenting shareholder for his shares is less than that appraised by the Court the amalgamated or surviving\(^668\) company shall pay to such shareholder the difference between the amount paid to him and the value appraised by the Court.

(6C)\(^669\) No appeal shall lie from an appraisal by the Court under this section.

(6D)\(^670\) The costs of any application to the Court under this section shall be in the discretion of the Court.

(7) An amalgamation agreement or merger agreement\(^671\) may provide that at any time before the issue of a certificate of amalgamation or merger\(^672\) the agreement may be terminated by the directors of an amalgamating or merging\(^673\) company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating or merging\(^674\) companies.

107. **SHORT FORM AMALGAMATION OR MERGER\(^675\)**

(1)\(^676\) A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company or merge and the holding company continue as the surviving company without complying with sections 105 and 106 if –

(a) the amalgamation or merger is approved by a resolution of the directors of each amalgamating or merging company; and

(b) the resolutions provide that –

(ii) the memorandum and bye-laws of the amalgamated or surviving company shall be the same as the memorandum and bye-laws of the amalgamating or merging holding company; and

(iii) no securities shall be issued by the amalgamated or surviving company in connection with the amalgamation or merger.

(2) Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company or merge and one of the wholly-owned subsidiary companies may continue as the surviving company without complying with sections 105 and 106 if –

(a) the amalgamation or merger is approved by a resolution of the directors of each amalgamating or merging company; and

(b) in respect of an amalgamation, the resolutions provide that –

(i) the shares of all but one of the amalgamating subsidiary companies shall be cancelled without any repayment of capital in respect of such shares;

(ii) the memorandum and bye-laws of the amalgamated company shall be the same as the memorandum and bye-laws of the amalgamating subsidiary company whose shares are not cancelled; and

(c) in respect of a merger, the resolutions provide that –

(i) one of the merging wholly-owned subsidiary companies is the surviving company;
(ii) the shares of all but the surviving company shall be cancelled without any repayment of capital in respect of such shares; and
(iii) the memorandum and bye-laws shall be the same as the memorandum and bye-laws of the surviving company.

(3) The amalgamating or merging companies may elect to combine their respective authorised share capitals and in the resolutions approving the amalgamation or merger they shall state whether or not they so elect.

(4) In this section where it is intended that there be a continuation of a foreign corporation after the amalgamation or merger event, the term “surviving company” shall be deemed to include “surviving corporation”.

108. REGISTRATION OF AMALGAMATED OR SURVIVING COMPANIES

(1) Subject to subsections (2) and (3) after the amalgamation or merger of companies has been adopted, the amalgamated or surviving company shall on application be registered by the Registrar and a certificate of amalgamation or certificate of merger issued to the company.

(2) Any application for the registration of an amalgamated or surviving company shall be accompanied by -

(a) a certified copy of the resolution or other authority, if any, of each amalgamating or merging company;
(b) the registered address of the amalgamated or surviving company;
(c) the memorandum of the amalgamated or surviving company; and
(d) the documents referred to in subsection (3); and
(e) a statement confirming that the company is to be registered as an amalgamated company pursuant to an amalgamation or to be registered as a surviving company pursuant to a merger.

(3) An application for registration of an amalgamated or surviving company shall have attached to it a statutory declaration by an officer of each amalgamating or merging company that establishes to the satisfaction of the Registrar that -

(a) each amalgamating or merging company is and the amalgamated or surviving company will be able to pay its liabilities as they become due;
(b) the realizable value of the amalgamated or surviving company’s assets will not be less than the aggregate of its liabilities and issued capital of all classes; and either
(c) no creditor will be prejudiced by the amalgamation or merger; or
(d) adequate notice has been given to all known creditors of the amalgamating or merging companies and no creditor objects to the amalgamation or merger otherwise than on grounds that are frivolous or vexatious.

(4) For the purposes of subsection (3)(d), adequate notice is given if -

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds one thousand dollars; and
(b) a notice is published in an appointed newspaper stating that the company intends to amalgamate or merge with one or more specified companies in accordance with this Act and that a creditor of the company may object to the amalgamation or merger within thirty days from the date of the notice.

109. EFFECT OF CERTIFICATE OF AMALGAMATED OR SURVIVING COMPANIES

(1) On the date shown in a certificate of amalgamation

(a) the amalgamation of the amalgamating companies and their continuance as one company shall become effective;

(b) the property of each amalgamating company shall become the property of the amalgamated company;

(c) the amalgamated company shall continue to be liable for the obligations of each amalgamating company;

(d) an existing cause of action, claim or liability to prosecution shall be unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued to be prosecuted by or against the amalgamated company;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and

(g) the certificate of amalgamation shall be deemed to be the certificate of incorporation of the amalgamated company, however, the date of incorporation of a company is its original date of incorporation and its amalgamation with another company does not alter its original date of incorporation.

(2) On the date shown in a certificate of merger –

(a) the merger of the merging companies and the vesting of their undertaking, property and liabilities in the surviving company shall become effective;

(b) the surviving company shall continue to be liable for the obligations of each merging company;

(c) an existing cause of action, claim or liability to prosecution shall be unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against a merging company may be continued to be prosecuted by or against the surviving company;

(e) a conviction against, or ruling, order or judgement in favour of or against, a merging company may be enforced by or against the surviving company;

(f) the certificate of merger shall be deemed to be the certificate of incorporation of the surviving company; however, the date of incorporation of a company is its original date of incorporation and its merger with another company does not alter its original date of incorporation;

(g) the Registrar shall strike off the register each Bermuda registered merging company that is not the surviving company; and

(h) the cessation of a merging company that is not the surviving company in a merger shall not be a winding up within Part XIII.
PART VIII - THE INVESTIGATION OF THE AFFAIRS OF A COMPANY AND THE PROTECTION OF MINORITIES

110. INVESTIGATION OF THE AFFAIRS OF A COMPANY

(1) Subject to subsection (10) the Minister may, at any time of his own volition or on the application of that proportion of the members of a company, as in his opinion warrants the application, based in respect of a company limited by shares, or other company having a share capital, on their shareholding, appoint one or more inspectors to investigate the affairs of the company and to report thereon in such manner as he may direct.

(2) The application by the members of a company shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring the investigation; and the Minister may, before appointing an inspector require the applicants to give security for payment of the costs of the inquiry.

(3) All officers and agents of the company shall produce to the inspector all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) Where any officer or agent refuses to produce any book or document that under this section it is his duty to produce, or to answer any questions relating to the affairs of the company, he shall be liable to a default fine and the court convicting him may order him to produce to the inspector the books or documents in respect of which he was convicted.

(6) Any person who fails to obey an order of a court made under subsection (5) requiring the production of any books or documents shall be guilty of contempt of Court and may be punished accordingly.

(7) On the conclusion of the investigation the inspector shall report his opinion to the Minister, and a copy of the report shall be forwarded by the Minister to the company and a further copy may in his discretion, at the request of the applicants for the investigation, be delivered to them.

(8) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Minister directs that they be paid by the company.

(9) A copy of a report made under this section shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

(10) The Minister shall not have the power under this section to appoint an inspector to investigate the affairs of an exempted company or a permit company.

111. ALTERNATIVE REMEDY TO WINDING UP IN CASES OF OPPRESSIVE OR PREJUDICIAL CONDUCT

(1) Any member of a company who complains that the affairs of the company are being conducted or have been conducted as aforesaid; and

(a) that the company’s affairs are being conducted or have been conducted as aforesaid; and
(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company’s affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company’s capital, or otherwise.

(3) Where an order under this section makes an alteration in or addition to any company’s memorandum or bye-laws, then, notwithstanding anything in any other provision but subject to the provisions of the order, the company concerned shall not have power without the leave of the Court to make further alteration in or addition to the memorandum or bye-laws as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company’s memorandum or bye-laws shall, within fourteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

112. PRESERVATION OF THE BOOKS AND ASSETS OF A COMPANY

(1) The Registrar in any case where the Minister has made an order under subsection (1) of section 110 or where he has made an application under subsection (1) of section 111 may apply to the Court ex parte for an order that the assets, books and papers of the company be preserved and not moved, modified, destroyed or deleted.

(2) If on any such application the Court is satisfied that there is a likelihood that the assets of the company will be transferred or that the books and papers of the company may be moved, modified, destroyed or deleted, it shall make an order that the assets of the company shall not be transferred to any other person, removed from Bermuda or otherwise dealt with and that the books and papers of the company shall not be moved, modified destroyed or deleted until a further order is made by the Court.

(3) Where an order under subsection (1) is served on a company the company may apply to the Court for the order to be discharged and the Court may -

(a) confirm the order;
(b) vary the order in such manner as it considers just; or
(c) discharge the order,

and in any case make such orders as it thinks desirable for the preservation of the assets of the company and the custody, inspection and copying of the books and papers of the company.

(4) The company and any officer or employee of the company who acts in contravention of an order of the Court made under subsection (2) or (3) shall be guilty of contempt of Court.

PART IX - LOCAL COMPANIES

113. INTERPRETATION

(1) In this Part and in the Third Schedule the following shall be deemed to be “Bermudian” -

(a) The Government or any corporation of which the majority of the directors, managers, or trustees are subject to appointment by the Governor or a Minister;
(b) any person who has Bermudian status by virtue of the law relating to immigration from time to time in force;

(c) a local company in which the percentage of shares beneficially owned by Bermudians is not less than eighty percent of the total issued share capital of that company;

(cc) a local statutory corporation;

(cd) a local company—

(i) the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry; or

(ii) licensed under section 114B;

(d) an institution licensed as a bank under section 14(5)(a) of the Banks and Deposits Companies Act 1999,

(e) a wholly owned subsidiary of a local company where such subsidiary was incorporated on or prior to 31 July 1996 so far, and so long as, that local company is complying with the Third Schedule and for so long as it abides by all the obligations of its parent company and does nothing in Bermuda that its parent company is unable lawfully to do; and

(f) a trust of which the majority of the trustees are persons with Bermudian status by virtue of the law relating to immigration from time to time in force and the trust is established for the benefit of Bermuda, Bermudians or things Bermudian.

(2) For the purposes of subsection (1), a company shall be deemed to be a wholly owned subsidiary of another company if the latter company enjoys the beneficial interest in all the shares of the former company through beneficial ownership or as beneficiary under a trust, express or implied, or through a nominee shareholder, to the exclusion of any other person, and control in the former company cannot, by means of any arrangement, artifice or device, be exercised either directly or indirectly by persons who are not Bermudians.

(3) No share shall be deemed to be beneficially owned by a Bermudian if -

(a) that Bermudian is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not Bermudian; or

(b) that share is held jointly or severally with any person who is not Bermudian; or

(c) that share is owned by a subsidiary company of the company concerned.

(4) For the purposes of this Part, the expression “local statutory corporation” means a corporation sole or a corporation aggregate, other than a company, incorporated by an Act, the principal functions of which relate to operations and affairs in Bermuda.

(5) For purposes of this Part—

“designated stock exchange” means the Bermuda Stock Exchange or such other stock exchange as the Minister may designate by order;

“prescribed industry” means telecommunications, energy, insurance, hotel operations, banking, or international transportation services (by ship or aircraft).

(6) The Minister may, for the purpose of revising the categories of industry under the definition of “prescribed industry” in subsection (5), by order amend the definition.

(7) An order under subsection (5) or (6) shall be subject to the negative resolution procedure.
(8) A company shall, 15 days prior to carrying out an intention to rely on the provisions of subsection (1)(cd)(i) or to carrying on business in reliance upon the provisions of section 114(1)(e), notify the Minister of the designated stock exchange on which its shares are listed and the prescribed industry in which it is engaged as a business in a material way, and on expiry of such notice the company shall be entitled to rely on the foregoing sections.

114. CIRCUMSTANCES IN WHICH LOCAL COMPANIES MAY CARRY ON BUSINESS

(1) No local company shall carry on business of any sort in Bermuda unless

(a) it is a company which, at the relevant time, complies with Part I of the Third Schedule or is a wholly-owned subsidiary of such a company, or

(b) it is a company mentioned in Part II of the said Schedule; or

(c) it is licensed under section 114B and, at the relevant time is carrying on such business in accordance with the terms and conditions imposed in such license, and not otherwise; or

(d) it is a wholly-owned subsidiary of a company referred to in paragraph (c); or

(e) it is a company the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry, or is a wholly-owned subsidiary of such a company.

(1A) Section 118 shall not apply to a company referred to in subsection (1) (e).

(2) Any local company that carries on business in contravention of subsection (1) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of the subsection.

(3) The Minister may by regulations amend Part I of the Third Schedule, and any such regulations shall be subject to affirmative resolution procedure.

(4) Section 132 shall apply mutatis mutandis to any company mentioned in Part II of the Third Schedule as if it were an exempted company.

114A. APPLICATION FOR LICENSE

(1) Any local company, may apply to the Minister for a license to carry on business in Bermuda.

(2) An application for a license under this section shall be made to the Minister in such form and accompanied by such documents as the Minister may determine.

(3) Before an application is made, the local company shall not less than seven days prior to the date of application advertise its intention to apply for a license under this section in an appointed newspaper.

114B. GRANTING AND REVOCATION OF LICENSE

(1) Subject to the provisions of this section, the Minister may, in his discretion, grant a license in respect of which application has been made under section 114A, but if the Minister is of opinion that it would not be in the public interest to grant a license, he may refuse to grant one without giving any reason for so refusing.

(2) A license issued under this section shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(3) The Minister shall, in deciding whether or not to grant a license to a local company to carry on business in Bermuda, have regard to-

(a) the economic situation in Bermuda and the protection of persons already engaged in business in Bermuda;
(b) the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;

(c) any advantage or disadvantage which may result from the company carrying on business in Bermuda; and

(d) the desirability of retaining in the control of Bermudians the economic resources of Bermuda.

(4) The Minister may at any time revoke a license -

(a) for a contravention of any condition subject to which the license is granted;

(b) if the company concerned is carrying on business in a manner detrimental to the public interest;

(c) if the company concerned ceases to carry on business in Bermuda;

(d) if the company concerned goes into liquidation or is wound up or otherwise dissolved; or

(e) if the company concerned fails to comply with any directive or requirement issued by the Minister under this Act.

(5) Before revoking a license under subsection (4) the Minister shall give the company concerned notice in writing of his intention to do so specifying therein the grounds on which he proposes to revoke the license and shall afford the company concerned an opportunity of submitting to him a written statement of objections to the revocation of the license; and thereafter the Minister shall advise the company concerned of his decision in the matter.

(6) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for public inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.

114C. FEES PAYABLE BY LOCAL LICENSED COMPANY

(1) Every local company to which a license is granted under this Act shall, upon the issue of such license, pay to the Government a fee of one thousand dollars.

(2) On or before the 31st day of January of every year after the year in which a license has been granted to a local company, that company shall, during the subsistence of such license, pay to the Government a fee of one thousand dollars.

(3) Any licensed local company which fails to pay the fee provided by this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding one hundred dollars for each month during which such fee remains unpaid.

(4) The Minister shall publish annually in the Gazette the name of every licensed local company that has paid the fee provided by this section.

115. SPECIAL PROVISIONS RELATING TO HOTEL COMPANIES

(1) In relation to any hotel company the Minister shall exercise his powers under section 114B after consultation with the Minister responsible for tourism.

(2) Notwithstanding any provision of a private Act restricting the transfer of shares in any hotel company, the Minister may, without prejudice to his powers under section 114B(2) impose conditions on the grant of a license to a hotel company restricting the transfer of shares in the company without the consent of such authority as the Minister may specify.
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(3) Where a hotel company is a subsidiary of a corporation incorporated outside Bermuda the Minister may without prejudice to his powers under section 114B, revoke a license in the event of the transfer of effective control of the corporation to persons who are not Bermudians.

(3a) The provisions of subsection (5) of section 114B shall apply to the revocation of a license under subsection (3) as they apply to the revocation of a license under subsection (4) of that section.

(4) In this section-

“hotel” has the meaning assigned to that expression in section I of the Hotels (Licensing and Control) Act 1969; “hotel company” means a company whose principal business in Bermuda is the ownership or the operation of a hotel in Bermuda.

116. PENALTY FOR IMPROPER EXERCISE OF VOTING RIGHTS ETC.

(1) Any person who, after a notice has been served upon him under sub-paragraph (2) of paragraph 2 of Part I of the Third Schedule exercises any voting rights or fails to divest himself of his shares within three years, or within such further period as the Minister may allow under the proviso to that sub-paragraph shall be liable to a fine of one thousand dollars.

(2) A court when convicting any person under subsection (1) of failing to divest himself of any shares shall, if the person convicted still holds the shares, fix a date by which he shall divest himself of the shares and if he fails so to do by such date he shall be guilty of a further offence and shall be liable to a fine of one hundred dollars for each day he has held the shares since the date the Court ordered him to divest himself of them.

(3) If any person fails to divest himself of any shares after having been found guilty of a further offence under subsection (2) he shall be guilty of contempt of court and the Court may summarily deal with him for such contempt until such time as he does divest himself of the shares.

(4) It shall be a good defence to a prosecution under subsection (2) for the owner to show that the company had at the relevant time ceased to carry on business in Bermuda or that the shares were valueless and that he was, therefore, unable to divest himself of them.

117. RETURN OF SHAREHOLDINGS

(1) Before any local company limited by shares, or other company having a share capital, first commences business the company shall forward to the Registrar a return of shareholdings in the company as at the date of making the return signed by a director of the company.

(2) Every local company limited by shares, or other company having a share capital, shall, not later than the 31st March each year after the year in which the company first commenced business, forward to the Registrar a return of shareholdings in the company as at the 31st day of December of the immediately preceding year signed by a director;

Provided that the Registrar may in any particular case grant an extension of time for compliance with this subsection if he is satisfied that non-compliance is not wilful or is due to circumstances beyond the control of the director of the company.

(3) A return of shareholdings under this section -

(a) shall contain the following particulars -

(i) the number and par value of each class of shares issued by the company;

(ii) the voting and other rights attached to each class of shares;
(iii) a statement of the number and par value of each class of shares beneficially owned by Bermudians; and

(iv) a statement of the number and par value of each class of shares held by other persons; and

(b) may be combined with a return made for the purpose of the payment of annual tax.

(4) Any local company which fails to comply with the provisions of this section shall be liable to a default fine.

(5) Any person who knowingly signs a return made for the purposes of this section which is false in a material particular shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

118. ALLOTMENT AND TRANSFER OF SHARES

(1) No allotment of shares in a local company shall be made by the officers of the company if such allotment will, to the knowledge or belief of them, or any of them, result in the number of shares beneficially owned by persons who are not Bermudians exceeding the amount such persons are entitled to own by virtue of the Third Schedule unless the prior written consent of the Minister is obtained.

(2) The officers of a local company shall decline to register any transfer of shares in the company if such transfer will, to the knowledge or belief of the officers, or any of them, result in the number of shares beneficially owned by persons who are not Bermudian exceeding the amount such persons are entitled to own by virtue of the Third Schedule unless the prior written consent of the Minister is obtained.

(3) No allotment of shares in a local company shall be made to any person unless the application for those shares sets out whether or not the applicant is Bermudian.

(4) No transfer of shares in a local company shall be registered unless the instrument of transfer of those shares sets out with respect to both the transferor and transferee whether or not they are Bermudian.

(5) Any officer of a local company who is knowingly a party to any allotment of shares contrary to subsection (1) or subsection (3) or who is knowingly a party to authorizing or permitting any transfer, or registration of a transfer, of shares contrary to subsection (2) or subsection (4), shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

(6) In any case where it is stated in an application for allotment, or in an instrument of transfer, of shares in a local company that an applicant, transferor or transferee is Bermudian the officers of the company may request that person to furnish such proof of the correctness of such statement as the officers consider necessary; and, in the absence of such proof, the officers may decline to allot any shares or register the transfer.

(7) The officers of a local company may at any time enquire in writing of any person who owns a share in the company -

(a) whether or not he is Bermudian;

(b) whether or not he is the beneficial owner of the shares;

(c) whether or not he is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, another person and, if so, the name of that other person and whether or not that other person is Bermudian; and
(d) whether he owns that share jointly or severally with another person and, if so, the name of the other person who has such an interest and whether or not that other person is Bermudian

and, if it is stated in any reply made to an enquiry under this subsection that any person is Bermudian, the officers may further require the person making that statement to furnish such proof of the correctness of that statement as the directors consider necessary.

(8) Any person to whom a request is made, or to whom an enquiry is addressed, under this section shall reply in writing, within fourteen days after the receipt of the request or the enquiry and shall give the information required; and no person shall be liable for breach of any contract, trust or other obligation which is binding on him in law for supplying such information.

(9) Any person who fails to reply in accordance with subsection (7) or subsection (8) or who makes a reply or furnishes information or purported proof which is false in a material particular shall be liable on conviction by a court of summary jurisdiction to a fine of one thousand dollars and on conviction on indictment to a fine of two thousand dollars.

(10) This section does not apply to a local company that is licensed under section 114B.

119. MINISTER MAY REQUIRE INFORMATION

(1) The Minister may at any time by notice in writing require the officers of a local company to forward to him such information as to the officers of and shareholdings (including the classes of shares and the voting and other rights attached to each class) in the local company as the Minister may specify.

(2) A notice under subsection (1) may require that the officers set out in writing within such period as may be specified in the notice the facts in relation to the officers, shareholdings and other matters relating to the control of the company which the officers contend establishes that the local company is Bermudian controlled and such facts shall specify the extent to which the control of any corporate body holding shares in the local company is vested in Bermudians.

(3) If the officers of a local company fail to comply with the requirements specified in a notice issued under this section, or fail to comply with the requirements thereof in such a manner as to establish, prima facie, that the company is Bermudian controlled, the company shall be deemed not to be Bermudian controlled until the contrary is proved.

120. ACQUISITION OF LAND BY LOCAL COMPANIES

(1) [REPEALED]

(1A) The Eleventh Schedule shall have effect with respect to—

(a) all rights, powers, duties and liabilities pertaining to the land held by a local company pursuant to a sanction granted by the Minister to a local company under the repealed subsection (1); and

(b) land held by a local company contrary to the repealed subsection (1) before the commencement of this subsection.

(2) Subject to subsection (3) of this section, where a local company holds an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001, the company shall have the power to acquire and hold in its corporate name any land in Bermuda provided it holds such land in its capacity as trustee of any trust or settlement established by written instrument.
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(3) Nothing in this section overrides any provision in Part VII of the Bermuda Immigration and Protection Act 1956 relating to the acquisition or the holding of land.

(4) A local company—

(a) without requiring consent of the Minister take land in Bermuda by way of lease or letting agreement for a term not exceeding fifty years, being land bona fide required for the purposes of the business of the company; and

(b) with the consent of the Minister, take land in Bermuda by way of lease or letting agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees.

(5) A local company that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000 or a tourism investment order made under the Tourism Investment Act 2017, land in Bermuda that is “tourist accommodation” or a “hotel residence” (as defined in section 72(1) of the Bermuda Immigration and Protection Act 1956), provided that it does not exceed in the whole the limit of the company’s land holding powers specified in its memorandum.

(6) For the purpose of subsection (5) a local company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner.

121. COMPANIES TO MAKE DECLARATIONS AND PAY ANNUAL TAX

(1) Every local company shall within one month of filing its memorandum and thereafter not later than the 31st March of each year—

(a) send to the Registrar a declaration in writing by an officer of the company stating what the issued capital of the company will be when it commences business or if it is in business what the issued capital of the company was on the 1st of January of that year and, in the case of a company whose business includes the management of any unit trust scheme, stating the number of unit trust schemes managed by the company on the first day of each calendar year, and

(b) pay the appropriate fee, if applicable, and the appropriate annual tax as shown in Part I of the Fifth Schedule:

Provided that, where the filing of the memorandum is effected after the 31st August in any year, the fee payable, if applicable, and tax payable in respect of that year shall be half the fee, if applicable and half the tax shown in the Schedule.

(2) If a company fails to send a declaration to the Registrar in compliance with paragraph (a) of subsection (1) or pay the appropriate fee, if applicable, and the annual tax the company and every officer of the company shall be liable to a default fine.

(3) It shall be lawful for the Registrar, in any case where a company has not made a declaration and payment in accordance with subsection (1) and where he is satisfied that such non-payment is not due to wilful neglect or default, to accept payment of the sum due together with a penalty of one hundred and fifty dollars, and in any such case subsection (2) shall not apply.
(4) In addition to any penalty it may incur if a company fails to pay the appropriate fee, if applicable, and the annual tax within three months of it becoming due it shall cease to carry on business until the fee, if applicable, and the tax and any penalty it may have incurred have been paid.

(5) Any company that carries on business in contravention of subsection (4) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of that subsection.

(6) If any question arises as to the appropriate fee, if applicable, and the annual tax payable by a local company the decision of the Minister as to what fee, if applicable, and tax are payable shall be final.

(7) The Minister may from time to time by order vary the fees shown in Part I of the Fifth Schedule. Any such order shall be subject to affirmative resolution procedure.

122. ACCOUNTANT GENERAL MAY CALL FOR AUDITOR’S CERTIFICATE

(1) The Accountant General may by notice in writing require a company to produce the certificate of an auditor approved by him setting out the issued capital of that company on the first day of January of such year as the Accountant General may specify in the notice.

(2) If a company without lawful excuse fails to comply with subsection (1), then that company shall be deemed to be liable for the maximum annual tax payable by a company pursuant to this Act in respect of the year to which the notice relates unless that company satisfies the Accountant General that it is liable to a lesser sum by way of annual tax.

123. RECOVERY OF ANNUAL TAX

Annual tax and any penalty payable pursuant to this Act may be recovered by the Accountant General in a court of summary jurisdiction as a civil debt, irrespective of the amount so payable.

124. [REPEALED]

125. CERTAIN COMPANIES EXEMPT FROM TAX

(1) A company shall be exempt from the payment of annual tax in any year if it satisfies the Accountant General that it is -

(a) a company limited by guarantee and is not a mutual company; or

(b) that it is operated for a charitable purpose; or

(c) that the company does not pursue any commercial enterprise for profit and that the income during each of the past years since its incorporation has not exceeded five hundred dollars.

(2) A company shall not be deemed to be operated for a charitable purpose for the purposes of subsection (1) if -

(i) it has power to engage or engages in any commercial enterprise otherwise than in furtherance of its charitable objects;

(ii) any dividend has at any time been paid on any of its share capital;

(iii) any interest has been paid on any capital employed other than capital employed in furtherance of its charitable purpose; or

(iv) any person is employed or remunerated for services otherwise than for services in furtherance of its charitable or reasonable administrative purposes.

126. INTERPRETATION

For the purposes of sections 121 to 125 unless the context otherwise requires -
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“issued capital” means in relation to -

(a) any company limited by shares, or other company having a share capital, the aggregate of the nominal value of the shares actually issued by the company whether or not the shares so issued are fully paid up; and

(b) in the case of a mutual company the nominal value of the reserve fund;

“year” means a calendar year.

PART X - EXEMPTED COMPANIES

127. MEANING OF EXEMPTED COMPANY

For the purposes of this Act, an exempted company means a company which does not comply with the requirements of this Act in respect of a local company and which –

(i) was recognized as an exempted company immediately before the appointed day;

(ii) is a company registered under this Act and stated in its memorandum to be an exempted company;

(iii) is a company incorporated by virtue of a private Act enacted after the appointed day and is declared by its incorporating Act to be an exempted company for the purposes of this Act;

(iv) is a company registered under this Act that has converted from an exempted partnership under section 13C of the Exempted Partnerships Act 1992 and section 27 of the Limited Partnership Act 1883, in accordance with section 132O of this Act.

128. EXEMPTED COMPANY TO BE AN EXEMPTED UNDERTAKING

(1) An exempted company shall be an exempted undertaking for the purposes of the Exempted Undertakings Tax Protection Act 1966.

(2) An exempted company shall be subject to the provisions of this Act and to the provisions of law save where otherwise expressly provided in this or any other Act.

129. RESTRICTION ON ACQUISITION OF PROPERTY ETC.

(1) Unless otherwise authorized by its incorporating Act or any other Act, an exempted company shall not-

(a) acquire or hold land in Bermuda except

(i) land required for its business held by way of lease or tenancy agreement for a term not exceeding fifty years; or

(ii) with the consent of the Minister granted in his discretion, land by way of lease or tenancy agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees;

(aa) acquire or hold land that is “tourist accommodation” or a “hotel residence” (as defined in section 72(1) of the Bermuda Immigration and Protection Act 1956), unless—

(i) the company has a physical presence in Bermuda and the Minister responsible for Immigration has given his consent by issuing a licence under Part VI of that Act; and
(ii) the land is acquired or held by way of lease or tenancy agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000 or in a tourism investment order made under the Tourism Investment Act 2017;  

(b) except as provided by section 144 take any mortgage of land in Bermuda;  

(c) acquire any bonds, or debentures secured on any land in Bermuda except bonds or debentures issued by the Government or a public authority;  

(d) [DELETED]  

(e) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise except –  

(i) carrying on business with persons outside Bermuda;  

(ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the exempted company carried on exterior to Bermuda;  

(iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities or investments issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking;  

(iv) transacting banking business in Bermuda with and through an institution licenced as a bank under the Banks and Deposit Companies Act 1999.  

(v) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;  

(vi) as manager or agent for, or consultant or adviser to any –  

(aa) exempted company or permit company which is affiliated whether or not incorporated in Bermuda with the exempted company; or  

(bb) exempted partnership registered under the Exempted Partnerships Act 1992 or overseas partnership registered under the Overseas Partnerships Act 1995 in which the exempted company is a partner;  

(vii) carrying on the business of reinsuring risks undertaken by any company incorporated in Bermuda and permitted to engage in insurance and reinsurance business; or  

(viii) in accordance with subsection (7)  

(aa) marketing of shares or dealing with the holders of the shares of an exempted company where the exempted company is a mutual fund;  

(bb) marketing interests in or dealing with holders of interests in a limited partnership in respect of which the exempted company is a general partner;  

(cc) marketing units in or dealing with holders of units in a unit trust scheme in respect of which the exempted company is a manager.

NB s. 20(2) of the Companies Amendment Act 2003:
Notwithstanding section 13 of this Act [which amended section 129 herein], a consent granted by the Minister under section 129 before the coming into force of this Act shall continue to have effect on the same conditions and with the same effect.

(1AA) For the purpose of subsection (1)(aa)(i) an exempted company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner.

(1A) Nothing in paragraph (e) of subsection (1) shall be taken to prohibit an exempted company from effecting or concluding contracts or arrangements with persons in Bermuda for the supply of goods and services to the company necessary for the purpose of enabling the company to carry on its business with persons outside Bermuda.

(1B) Nothing in subsection (1)(e) shall prohibit an exempted company from offering goods or services electronically from a place of business in Bermuda or through an Internet or other electronic service provider located in Bermuda.

(2) Notwithstanding anything in any Act under authority of which an exempted company is incorporated such a company shall not engage or carry on the business of conveying or arranging for the conveyance of passengers, goods or mails by ships whether such conveyance is within waters of Bermuda except -

(i) where the ship is owned, operated or chartered by or on behalf of an exempted company;

(ii) where the conveyance is of a passenger employed by the exempted company or of goods which are or are to become the property of the exempted company; or

(iii) when the business is negotiated by a local company.

(3) Notwithstanding anything in this Act an exempted company at the date of the commencement of this Act having in its memorandum among its objects an object empowering the company to reinsure all or any risks undertaken by the company shall be deemed in addition to have and always to have had the power to accept insurance and reinsurance of any risks of another exempted company similarly empowered.

(4) Notwithstanding anything in this Act, any object in the memorandum of an exempted company empowering the company to engage in retail trade in Bermuda, including retail trade with another exempted company or an exempted undertaking or any other person, shall be void to the extent that it purports so to empower that exempted company.

(5) If an exempted company does anything in contravention of the provisions of subsection (1), then the land, merchandise, stocks, shares, bonds, debentures, securities, property or other interests so acquired or disposed of, taken or held, will be liable to escheat under the Escheats Act 1871 or under any other Act relating to escheat.

(6) It is hereby declared that in any proceedings for escheat under subsection (5), the question whether any land, merchandise, stocks, shares, bonds, debentures, securities, property or other interests have been taken, acquired, disposed of or held in contravention of the provisions of subsection (1), shall be decided as a question of fact.

(7) For the purposes of subsection (1)(e)(viii), an exempted company shall be deemed to be marketing, or dealing with holders of shares, interests or units if it undertakes any of the following activities in Bermuda, that is to say -

(i) the offering of such shares, interests or units for subscription or purchase by way of a prospectus or otherwise;
(ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;

(iii) the distribution of shareholder, limited partnership or unitholder information to holders of such shares, interests or units;

(iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communicating with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unitholder information; and

(v) any other dealing with the holders of such shares, interests or units with respect to any such shares, interests or units held by them.

129A. CIRCUMSTANCES IN WHICH EXEMPTED COMPANY MAY CARRY ON BUSINESS IN BERMUDA

(1) Except as provided in subsection (4), no exempted company shall carry on business in Bermuda unless the Minister, on application made by the company in such form as the Minister may determine, grants a license to the company empowering it so to do or to carry on in Bermuda a business or an activity prohibited by subsection (1) or (2) of section 129:

Provided that such a license shall not authorize an exempted company to engage in retail trade in Bermuda with any other person.

(1A) The company shall not less than seven days prior to an application for a license under subsection (1) advertise its intention to apply for a license under this section in an appointed newspaper.

(2) A license issued under subsection (1) shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(3) Subsections (3), (4) and (5) of section 114B and section 114C shall apply mutatis mutandis to an exempted company licensed under this section.

(4) An exempted company shall not require a license to carry on in Bermuda -

(a) a business or activity specified as an exception in section 129(1)(a) to (e) (inclusive); or

(aa) business as an insurance manager or broker as defined in the Insurance Act 1978 if the company is registered under that Act to do so; or

(b) trust business as defined in the Trusts (Regulation of Trust Business) Act 2001 if -

(i) the exempted company holds an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001; and

(ii) the settlor of the trust which is managed or administered in Bermuda by the exempted company is not ordinarily resident in Bermuda at the date of creation of the settlement.

(4A) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.

(5) An exempted company which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars for each day the
offence continues or on conviction on indictment to a fine not exceeding one thousand five hundred dollars for each day the offence continues.

130. REQUIREMENTS FOR OFFICERS OR REPRESENTATIVES IN BERMUDA

(1) Every exempted company shall have -
   
   (a) a minimum of one director, other than an alternate director, who is ordinarily resident in Bermuda; or

   (b) a secretary that is –

      (i) an individual who is ordinarily resident in Bermuda; or

      (ii) a company which is ordinarily resident in Bermuda; or

   (c) a resident representative that is –

      (i) an individual who is ordinarily resident in Bermuda; or

      (ii) a company which is ordinarily resident in Bermuda.

(2) [REPEALED]

(3) [REPEALED]

(4) [REPEALED]

(5) A resident representative shall:

   (a) be entitled to attend, to be heard at, and to receive minutes of all proceedings of, all meetings of the directors and members of the company or of any committee of such directors;

   (b) upon giving notice to the company of an address for the purposes of receipt of notices, be entitled to receive notice of any meeting of the directors or members, or any committee of such directors; but accidental omission to give such notice shall not invalidate any action taken at any such meetings;

   (c) act as agent for the service of process in Bermuda;  

   (d) be entitled to file all documents and make all applications required or permitted by this Act.

(6) It shall be the duty of the resident representative in any circumstances where the resident representative becomes aware that -

   (a) the company has committed a breach of any provision of this Act or any regulation made hereunder which will have a material effect on the affairs of the company; or

   (b) any issue or transfer of shares of the company has been effected in contravention of any other statute regulating the issue or transfer of shares,

   to make a written report to the Registrar within thirty days of becoming so aware and the report shall contain all relevant particulars unless before such report is made the company has remedied such breach or contravention.

(7) Where an exempted company has a resident representative, the resident representative shall -

   (a) [REPEALED]

   (b) [REPEALED]
(c) maintain at his or its office in Bermuda originals or copies of minutes of all proceedings of meetings of directors and members of the company, all financial statements required to be prepared by the company under this Act together with the auditor’s report thereon, and all records of account required by section 83 to be kept in Bermuda.

(8) \[REPEALED]^{852}

(9) For the purposes of section 92A only, “officer” shall include a resident representative.

(10) The duty of the resident representative under subsection (6)\(^{853}\) shall be owed to the Registrar and no resident representative shall be liable to the company or any other person for any report made by the resident representative pursuant to subsection (6)\(^{854}\) or any failure or purported failure to make any report under that subsection\(^{855}\).

(11) The Minister may make regulations providing for the qualifications of a secretary for the purposes of this section; and any such regulations shall be subject to the affirmative resolution procedure.

(12) Wilful failure by the resident representative to comply with any of the provisions of this section shall be an offence and shall render the resident representative or the company liable on conviction to a fine not exceeding five thousand dollars.

131. ANNUAL FEES\(^{856}\)

(1) Subject to subsections (2A) and (2B), every exempted company shall at the time\(^{857}\) of filing its memorandum with the Registrar and thereafter during the month of January in each year -

(a) send to the Registrar a declaration in writing signed on behalf of the company\(^{858}\)

(i) stating what is or is intended to be the principal business of the company and, in the case of a company whose business is to include the management of any unit trust scheme, stating the number of unit trust schemes to be managed by the company; and

(ii) further stating -

(aa) where the company is one limited by shares, or other company having a share capital,\(^{859}\)

1. the amount of the company’s authorised share capital; and

2. the amount of the company’s share premium account; and

3. the amount of the company’s assessable capital, that is to say, the total of the amounts at 1 and 2 above or, in the case of a mutual fund as defined in section 156A, the amount at 1 above\(^{860}\); and

4. the amount of the company’s assessable capital expressed in Bermuda area currency, where the amount of the company’s assessable capital is not already so expressed; and

5. the exchange rate used to convert into Bermuda area currency the company’s assessable capital, where that capital is denominated in a currency other than Bermuda area currency; and

6. the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule; and

(bb) where the company is a mutual company -
1. the amount of the company’s assessable capital, that is to say, the amount of the company’s reserve fund; and

2. the amount of the company’s assessable capital expressed in Bermuda area currency, where that amount is not already so expressed; and

3. the exchange rate used to convert into Bermuda area currency the company’s assessable capital, where that capital is denominated in a currency other than Bermuda area currency; and

4. the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule.

For the purposes of this paragraph -

(iii) the information called for thereby shall -

(aa) where it is to be given upon the incorporation of a company, be given as at the date of the filing of the company’s memorandum;

(bb) where it is to be given in January in any year in relation to a company which was incorporated after 31st August of the next preceding year, be given as at the date of the filing of the company’s memorandum;

(cc) in any other case, be given as at 31st August of the year next preceding the year in which the information is given, except that the date to be taken for converting a company’s assessable capital into Bermuda area currency where that capital is denominated in a currency other than Bermuda area currency shall -

A in the case of a company limited by shares, or other company having a share capital, be the later of the following dates, that is to say, the date of the filing of the company’s memorandum and the date on which the company’s authorised share capital was last lawfully altered; and

B in the case of a mutual company, be the later of the following dates, that is to say, the date of the filing of the company’s memorandum and the date on which the company’s reserve fund was last lawfully altered;

(iv) the exchange rate for converting into Bermuda area currency on any day a currency that is not Bermuda area currency shall be the middle market rate for that currency on that day as determined, in accordance with the provisions of subsection (4) of section 15 of the Stamp Duties Act 1976 mutatis mutandis, by the Registrar, whose determination in any case shall be final and conclusive;

(v) currency of the United States of America shall be converted into Bermuda area currency at par;

(vi) where a calculation produces a fraction of a dollar, the result shall be rounded up to the next whole dollar; and
(vii) “authorised capital”, in relation to a company, means the amount stated in the company’s memorandum as the company’s authorised capital, as lawfully altered from time to time; and

(b) pay the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule:

Provided that, where the memorandum is filed after 31st August in any year, the fee payable shall be half that fee.

(2) If a company fails to comply with subsection (1), the company and every officer of the company shall be liable to a default fine.

(2A) A company liable to pay the fees provided for in sub-paragraph A(b) of paragraph 1 of Part II of the Fifth Schedule must pay those fees in addition to any other fee that the company is liable to pay under subsection (1).

(2B) A company liable to pay a fee pursuant to sub-paragraph A(c) of paragraph 1 of Part II of the Fifth Schedule is not liable to pay any other fee prescribed by subsection (1).

(3) It shall be lawful for the Registrar, in any case where a company has failed to comply with subsection (1) and he is satisfied that such non-compliance is not the result of wilful neglect or default, to accept late compliance and payment of the sum due together with a penalty of three hundred dollars; and in such a case subsection (2) shall not apply.

(4) In addition to any penalty it may incur if a company fails to pay the appropriate fee within three months of it becoming due it shall cease to carry on business until the fee and any penalty it may have incurred have been paid.

(5) Any company that carries on business in contravention of subsection (4) shall be liable to a fine of one hundred dollars in respect of each day that it carries on business in contravention of that subsection.

(6) If any question arises as to the appropriate fee payable by an exempted company the decision of the Minister as to what fee is payable shall be final.

(7) The Minister may from time to time by order vary all or any of the fees shown in Part II of the Fifth Schedule. Any such order shall be subject to affirmative resolution procedure.

132. INVESTIGATION OF THE AFFAIRS OF AN EXEMPTED COMPANY

(1) The Minister may at any time appoint one or more inspectors to investigate the affairs of an exempted company and to report on them in such manner as he may direct.

(2) All expenses of and incidental to the investigation shall be defrayed by the exempted company unless the Minister otherwise directs.

(3) Every officer, agent or employee of the company shall produce to the inspector such books or documents as the inspector may require for the purpose of his investigation.

(4) Any officer, agent or employee of the exempted company who, in the course of an investigation of the affairs of the company -

(a) refuses to produce any book or document required by the inspector to be produced; or

(b) refuses to answer any question relating to the affairs of the company,

shall be liable to a fine of one hundred dollars.
(5) The inspector may take evidence upon oath in investigating the affairs of the exempted company, and for that purpose may administer an oath or affirmation.

(6) Any investigation under this section shall be held in private unless the company requests that it be held in public.

(7) The inspector may from time to time report to the Minister and shall on the completion of his investigation report to him and shall send copies of such reports to the company. No other person shall be informed of the nature or contents of the report save at the request of the company or on the direction of the Minister.

(8) If the Minister considers, after examining any such report that the company or any of its officers, agents or employees

(a) have knowingly and wilfully done anything in contravention of this Act or of any license, permit or permission granted under this Act, he may direct the Registrar to petition the Court for the winding up of the company;

(b) are carrying on its affairs in a manner detrimental to the interests of the members of the company or the creditors of the company he may require the company to take such measures as he may consider necessary in relation to its affairs.

(9) A copy of any petition referred to in subsection (8) shall be served on the company at least seven clear days before the day set by the Court for the hearing thereof.

(10) If the Court, on the hearing of any such petition, is satisfied that the company or any of its officers, agents or employees have done anything in contravention of the provisions of this Act or of any license, permit or permission granted under the Act, the Court may;

(a) make an order for the winding up of the company; or

(b) impose a fine of two thousand dollars on the company; or

(c) impose a like fine on any officer, agent or employee of the company who has knowingly and wilfully authorized or permitted any such contravention.

(11) Where the Court makes an order for the winding up of a company under subsection (10) the company shall be wound up in the same manner and with the same procedure as if the circumstances leading to the order were circumstances referred to in section 161.

(12) Any proceedings in connection with the holding of an investigation by the inspector in pursuance of the provisions of this section shall, for the purposes of those provisions of the Criminal Code relating to perjury, be deemed to be judicial proceedings.

(13) Whenever the Minister appoints an inspector or inspectors by virtue of subsection (1) the Registrar may make an application to the Court under section 112 for an order that the assets books and papers of the company be preserved and not moved, modified, deleted or destroyed and this section shall apply to such application mutatis mutandis.

132A. **DENOMINATION OF CAPITAL OF EXEMPTED COMPANIES**

Notwithstanding the provisions of the Bermuda Monetary Authority Act 1969, the share capital of an exempted company and its share certificates may be denominated in such currency as the company thinks expedient.
132B. **SECTION 124 APPLIES TO AN EXEMPTED COMPANY**

Section 124 applies *mutatis mutandis* to an exempted company.

**PART XA** - CONTINUATION AND DISCONTINUATION OF COMPANIES

132C. **CONTINUANCE IN BERMUDA**

(1) A body incorporated outside Bermuda (hereafter in this Part referred to as a “foreign corporation”) may, subject to section 4A, be continued in Bermuda as an exempted company to which the provisions of this Act and any other relevant laws of Bermuda shall apply.

(2) A foreign corporation seeking to be continued in Bermuda shall -

(a) obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to continue as an exempted company registered in Bermuda;

(b) provide a memorandum of continuance in such form as the Minister may determine;

(c) provide financial statements of the foreign corporation prepared for a period ending within twelve months of the proposed date of continuance.

(3) A foreign corporation shall deliver to the Registrar the memorandum of continuance for registration.

(3A) A foreign corporation shall within one month after the date of registration of the memorandum of continuance under this section pay the appropriate fee payable in respect of the corporation as an exempted company according to Part II of the Fifth Schedule, but where the registration is effected after 31 August in any year, the fee payable in respect of that year shall be half the appropriate fee.

(4) If the Registrar is satisfied that the foreign corporation will be in compliance with this Act, he shall register the memorandum of continuance whereupon it will become effective and -

(a) the Registrar shall issue a certificate of deposit of the memorandum of continuance in such form as the Minister may determine;

(b) the foreign corporation will become a company to which this Act and any other laws of Bermuda apply as if it had been incorporated in Bermuda on the date of the registration;

(c) the memorandum of continuance shall be deemed to be the memorandum of association of the foreign corporation in lieu of its original, re-stated or amended memorandum of association, articles of incorporation or other constituting documents;

(d) the Registrar shall issue a certificate of continuance in such form as the Minister may determine;

(e) the foreign corporation shall forward a copy of the certificate of continuance to the competent authority in the country or jurisdiction from which it has been continued.

(5) Notwithstanding the provisions of Part XI and the provisions of the Insurance Act 1978, with effect from the date of continuance-

(a) any permit issued under section 134 shall cease to apply to the continued company; and

(b) any current registration of the continued company under section 4 of the Insurance Act 1978 shall continue with suitable endorsement by the Registrar as to the date of continuance.

(6) [REPEALED]
(132D. PROVISIONS OF ACT APPLYING TO MEMORANDUM OF CONTINUANCE AND CERTIFICATE OF CONTINUANCE)

(1) The provisions of this Act respecting a memorandum of association shall, mutatis mutandis, apply to a memorandum of continuance.

(2) The provisions of this Act respecting a certificate of incorporation shall, mutatis mutandis, apply to a certificate of continuance.

(3) The memorandum of continuance and a copy of the certificate of continuance shall be documents open to public inspection.

(132E. CONSEQUENCES OF CONTINUANCE OF FOREIGN CORPORATION)

(1) Upon continuance of a foreign corporation as a company under this Act -
   (a) the property of the foreign corporation continues to be the property of the company;
   (b) the company continues to be liable for the obligations of the foreign corporation;
   (c) any existing cause of action, claim or liability to prosecution in respect of the foreign corporation is unaffected;
   (d) any civil, criminal or administrative action or proceeding pending by or against the foreign corporation may be continued by or against the company; and
   (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign corporation may be enforced by or against the company.

(2) The registration of the continuance of a foreign corporation under this Part shall not be deemed to –
   (a) create a new legal entity; or
   (b) prejudice or affect the continuity of the body corporate which was formerly a foreign corporation, now a company continued in Bermuda under this Part.

(3) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date of continuance and which could have been pursued under the laws then governing such foreign corporation.

(132F. CONTINUED COMPANY TO ADOPT BYE-LAWS)

The continued company shall, as soon as practicable from the date of continuation in Bermuda, ensure that it has adopted bye-laws which conform to the requirements of this Act and any other law of Bermuda.
132G. EXEMPTED COMPANY MAY DISCONTINUE OUT OF BERMUDA

(1) An exempted company may be discontinued under this Act and be continued in a jurisdiction outside Bermuda as if it had been incorporated under the laws of that other jurisdiction.

(2) An exempted company shall not be discontinued pursuant to subsection (1) unless:

   (a) (i) a resolution of the members or each class of members is passed in general meeting approving the discontinuance, provided that at any such meeting each share of the company shall carry the right to vote in respect of such discontinuance whether or not it otherwise carries the right to vote; or

   (ii) the discontinuance is approved in such manner as may be authorised by the bye-laws of the company;

   (b) a statutory declaration has been signed by a director of the company stating that the company is solvent and can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of bona fide creditors and members;

   (c) an irrevocable deed poll is executed by such company and its directors pursuant to which:

      (i) such company and each of its directors may be served with legal process in Bermuda in any proceeding arising out of actions or omissions of such company prior to the discontinuance and provision is made for the appointment of a person within Bermuda as agent for such company for the service of process for a period of not less than three years from the date of discontinuance and for a signed acceptance of the appointment; or

      (ii) such company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such company and such directors submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;

   (d) at least fourteen days prior to the discontinuance such company advertises in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its trade or business activities its intention to discontinue under this Act and continue in the named jurisdiction; and

   (e) the jurisdiction in which such company is to be continued is -

      (i) an appointed jurisdiction; or

      (ii) approved by the Minister, upon application by the company for the purpose of the discontinuance of the company out of Bermuda.

132H. DOCUMENTS TO BE FILED ON DISCONTINUANCE

(1) An exempted company shall not be discontinued pursuant to section 132G unless on or before the effective date of the discontinuance, such company files with the Registrar a notice of the discontinuance which shall contain or have attached thereto the following information:

   (a) the effective date of the discontinuance;

   (b) the name of the jurisdiction in which the company will continue;
(c) the address of the registered office or the principal business address of the company in the jurisdiction in which the company will continue;

(d) a copy of the statutory declaration required pursuant to section 132G(2)(b); and

(e) a copy of the irrevocable deed poll required pursuant to section 132G(2)(c).

(2) Within thirty days after the date of the issue thereof a company which has been discontinued pursuant to section 132G shall file with the Registrar a copy of the instrument of continuance issued to the company by the appropriate authority of the jurisdiction into which the company has been continued, or, if no such instrument of continuance is issued, such other documentary evidence of such continuance as shall be issued by such authority.

(3) On receipt of a copy of the instrument of continuance or other documentary evidence of continuance, the Registrar shall file that instrument or document and issue a certificate of discontinuance which shall be in such form as the Minister may determine and thereupon the company shall cease to be registered as a company in Bermuda.

(4) The documents filed with the Registrar pursuant to subsections (1), (2) and (3) shall be open to public inspection.

132I. EFFECT OF DISCONTINUANCE

(1) The effective date of the discontinuance of a company pursuant to section 132H shall be the date that such company’s continuance in the appointed jurisdiction is effective pursuant to the laws of such other jurisdiction, and such discontinuance and continuance shall not be deemed to operate to-

(a) create a new legal entity; or

(b) prejudice or affect the continuity of the body corporate which was formerly the company that was subject to this Act.

(2) On the effective date of the discontinuance of a company pursuant to section 132H this Act shall cease to apply to such company except as is required by the provisions hereof.

132J. [REPEALED]

132K. [REPEALED]

132L. PUBLIC INSPECTION OF DOCUMENTS

The instrument of continuance, the certificate of discontinuance and the declaration of discontinuance shall be documents open to public inspection.

132M. REGULATIONS

The Minister may make Regulations for carrying out the purposes and provisions of this Part into effect.

PART XB - CONVERSION OF EXEMPTED COMPANY TO PARTNERSHIP

132N. CONVERSION OF EXEMPTED COMPANY TO PARTNERSHIP

(1) An exempted company may—

(a) upon payment of such fee as the Minister may prescribe;

(b) if at least fourteen days prior to its application under subsection (2), the company has advertised in an appointed newspaper and in a national newspaper in each jurisdiction
within which it carried on a substantial part of its business activities its intention to convert to a partnership;

(c) with the Bermuda Monetary Authority’s consent and upon filing the certificate required—

(i) by section 5(1) of the Exempted Partnerships Act 1992; and

(ii) by section 4(1) of the Limited Partnership Act 1883,

convert to a partnership and be registered under the Exempted Partnerships Act 1992 and Limited Partnership Act 1883 and, with effect from the date indicated on the certificate of registration issued by the Registrar pursuant to section 9(3) of the Exempted Partnerships Act 1992, shall be governed thereafter as a partnership in accordance with the Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Partnership Act 1902.

(2) An application for the Authority’s consent to the conversion of an exempted company to a partnership shall be in such form, and be accompanied by the advertisement referred to in subsection (1)(b) and by such documents, as the Authority may require.

(3) An application for conversion to a partnership in the prescribed form, shall be filed with the Authority and shall include—

(a) the name of the exempted company;

(b) the date of its certificate of incorporation;

(c) the name of such exempted company as altered;

(d) the future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective as of the filing date of the certificates referred to in subsection (1)(c));

(e) confirmation that the conversion has been approved by the board of directors and by the shareholders of such exempted company in such manner as may be authorised by the bye-laws of such exempted company;

(f) the registered office address of the partnership; and

(g) confirmation that the members have approved a form of partnership agreement of the partnership.

(4) The Authority may grant or refuse consent to an application made under subsection (3).

(5) Section 4A(4) shall apply with the necessary modifications to an application for consent under this section as it applies to an application for consent under section 4A.

(6) Not later than six months after the Authority has consented to an application under subsection (3), the partners shall deliver to the Registrar—

(a) a copy of the application for conversion filed under subsection (3);

(b) the consent of the Authority referred to in under subsection (4);

(c) a declaration signed by a director of the company stating that the company is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and members; and

(d) the certificates required by subsection (1)(c).
(7) Where the Registrar receives confirmation that the Authority has consented to the conversion, the Registrar shall deliver a certificate of conversion which shall specify the date of conversion of the exempted company to a partnership.

(8) Upon conversion of an exempted company to a partnership under this section—
   (a) the property of the exempted company so converted continues to be the property of the partnership;
   (b) the partnership continues to be liable for the obligations of the exempted company;
   (c) any existing cause of action, claim or liability to prosecution in respect of the exempted company is unaffected;
   (d) any civil, criminal or administrative action or proceeding pending by or against the exempted company may be continued by or against the partnership; and
   (e) any conviction against, or any ruling, order or judgment in favour of or against the exempted company may be enforced by or against the partnership.

(9) The conversion of an exempted company to a partnership pursuant to this section—
   (a) shall not constitute a dissolution of such exempted company; and
   (b) shall cause the partnership to be deemed to be the same entity as the converting exempted company and the conversion shall constitute a continuation of the existence of the exempted company in the form of a partnership.

(10) The rights, privileges, powers and interests in property of the exempted company that has converted, shall not be deemed, as a consequence of the conversion, to have been transferred to the partnership to which the company has converted for any purpose of the laws of Bermuda.

(11) The conversion of an exempted company to a partnership under this section shall not be deemed to—
   (a) create a new legal entity; or
   (b) prejudice or affect the continuity of the body corporate which was formerly an exempted company, now converted to an exempted partnership under this section.

(11A) Conversion of an exempted company to a partnership does not require such company to wind up its affairs nor does it constitute a dissolution of such company. ①

① Savings

6 For the avoidance of doubt, where a partnership existing on 8 September 2006 elected to have legal personality within the period of twelve months after that date—
   (a) nothing in the Partnerships and Companies Amendment Act 2016 shall affect that election unless it is expressly otherwise provided in that Act;
   (b) a partnership that so elected to have legal personality shall continue to have legal personality as from the date when the election was made; and
   (c) nothing in the Partnerships and Companies Amendment Act 2016 shall affect anything that was lawfully done by that partnership prior to the date of the coming into force of the Partnerships and Companies Amendment Act 2016.
For the purposes of this section, “partnership” means a partnership—
(a) that is both—
   (i) a limited partnership registered under the Limited Partnership Act 1883; and
   (ii) an exempted partnership registered under the Exempted Partnerships Act 1992; and
(b) which has elected to have legal personality pursuant to section 4A or 4BA of the Partnership Act 1902.

132O CONVERSION OF PARTNERSHIP THAT IS EXEMPTED AND LIMITED TO AN EXEMPTED COMPANY

(1) This section applies to a partnership —
   (a) that is both—
      (i) a limited partnership registered under the Limited Partnership Act 1883; and
      (ii) an exempted partnership registered under the Exempted Partnerships Act 1992; and
   (b) which has elected to have legal personality, pursuant to section 4A or 4BA of the Partnership Act 1902.

(2) Upon satisfaction of the requirements for conversion that are set out in section 13C of the Exempted Partnerships Act 1992 and in section 27 of the Limited Partnership Act 1883, any partnership may—
   (a) convert to an exempted company; and
   (b) be registered as an exempted company under this Act.

(3) With effect from the date indicated on the certificate of conversion issued by the Registrar under section 13C of the Exempted Partnerships Act 1992 and under section 27 of the Limited Partnership Act 1883, the partnership shall be governed as an exempted company in accordance with this Act.

(4) For any exempted company so converted, the certificate of conversion so issued by the Registrar shall be deemed to be the certificate of registration for the purposes of this Act.

132P CONVERSION OF A COMPANY TO LIMITED LIABILITY COMPANY

(1) Upon satisfaction of the requirements for conversion that are set out in section 101 of the Limited Liability Company Act 2016, any company may—
   (a) convert to a limited liability company; and
   (b) be registered as a limited liability company under the Limited Liability Company Act 2016.

(2) The effective date of the conversion of the company to a limited liability company shall be the date of filing with the Registrar of the certificate of conversion or any later date or time (which shall be a date or time certain) specified in the certificate of conversion of the company to a limited liability company.

(3) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 101 of the Limited Liability Company Act 2016, the company shall be governed as a limited liability company in accordance with the Limited Liability Company Act 2016.

132Q CONVERSION OF A LIMITED LIABILITY COMPANY TO A COMPANY

(1) Upon satisfaction of the requirements for conversion that are set out in section 100 of the Limited Liability Company Act 2016, any limited liability company may—
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(a) convert to a company; and
(b) be registered as a company under this Act.

(2) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 100 of the Limited Liability Company Act 2016, the limited liability company shall be governed as a company in accordance with this Act.

(3) For any company so converted, the certificate of conversion shall be deemed to be the certificate of incorporation for the purposes of this Act.

PART XI - OVERSEAS COMPANIES

133. OVERSEAS COMPANY NOT TO CARRY ON BUSINESS WITHOUT A PERMIT

(1) An overseas company shall not engage in or carry on any trade or business in Bermuda without a permit from the Minister issued under section 134.

(2) Any permit issued to an overseas company enabling it lawfully to engage in or carry on any trade or business in Bermuda under the authority of any Act other than this Act or the Non-Resident Insurance Undertakings Act 1967 shall be deemed to be a permit issued under section 134 if valid on the appointed day and for so long as it remains valid.

(3) For the purposes of this section and this Part, the expression “engage in or carry on any trade or business in Bermuda” includes the engaging in or carrying on any trade or business outside Bermuda from a place of business in Bermuda.

(4) A company shall be deemed to engage in or carry on any trade or business in Bermuda if it occupies premises in Bermuda or if it makes known by way of advertisement, or by an insertion in a directory or by means of letter heads that it may be contacted at a particular address in Bermuda or is otherwise seen to be engaging in or carrying on any trade or business in or from within Bermuda on a continuing basis:

Provided that a company shall not be deemed to engage in or carry on any trade or business in Bermuda by reason only that-

(a) a travelling salesman representing the company who has been permitted to land in Bermuda as such establishes a temporary place of business in Bermuda; or
(b) meetings of its officers or members are held in Bermuda; or
(c) the company is buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking.

(5) A company shall be deemed to engage in or carry on any trade or business in Bermuda if it makes known by way of advertisement or by any statement on a web site or by an electronic record as defined in the Electronic Transactions Act 1999 that it may be contacted at a particular address in Bermuda or if it uses a Bermudian domain name.

133A MUTUAL FUND EXEMPTED FROM REQUIREMENT OF A PERMIT

(1) Section 133 shall not apply to a mutual fund exempted under subsection (2).

(2) A mutual fund is exempt if it engages a person in Bermuda to be the mutual fund’s administrator or registrar to perform any or all of the following services or activities for the mutual fund in Bermuda -

(a) corporate secretarial;
(b) accounting;
(c) administrative;
(d) registrar and transfer agency;
(e) in relation to the marketing or dealing with the holders of its shares, the activities specified in section 136(4).

(3) In this section “mutual fund” has the meaning given in section 136(5).

134. GRANT OF PERMIT TO OVERSEAS COMPANY

(1) An overseas company without a permit may apply to the Minister for a permit to engage in or carry on any trade or business in Bermuda.

(2) Every application for a permit shall be accompanied by such documents and particulars as the Minister may from time to time require and shall be accompanied by the application fee prescribed under the Government Fees Act 1965.

(3) Within three months prior to an application for a permit under subsection (1) the company shall publish in an appointed newspaper an advertisement announcing the intention to apply for a permit specifying its name and stating the trade or business it proposes to engage in or carry on in Bermuda.

(4) Where the Minister refuses to grant a permit he shall not be bound to assign any reason therefor.

(5) Without prejudice to the discretion conferred on the Minister by this section, he shall, in deciding whether or not to grant a permit, have regard to -

(a) the economic situation in Bermuda and the due protection of persons already engaged in or carrying on any trade or business in Bermuda;
(b) the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;
(c) any advantage or disadvantage which may result from the company engaging in or carrying on a trade or business in Bermuda.

135. ANNUAL FEES

(1) Subject to subsection (1A), every permit company shall before engaging in or carrying on any trade or business in Bermuda, and thereafter during the month of March each year, pay the appropriate fee payable in respect of the company according to Part II of the Fifth Schedule, but where a permit is issued after 31 October in any year, the fee payable in respect of that year shall be half the appropriate fee; and sub-paragraph (i) of paragraph (a) of subsection (1) of section 131 shall apply mutatis mutandis to every such company.

(1A) A company liable to pay the fees provided for in sub-paragraph B(c) of paragraph 1 of Part II of the Fifth Schedule must pay those fees in addition to any other fee that the company is liable to pay under subsection (1).

(2) If a company fails to pay the appropriate fee as provided in subsection (1) it shall be liable to a default fine.

(3) Subsections (2), (3), (4), (5) and (6) of section 131 shall apply mutatis mutandis to permit companies.
136. **CONDITIONS SUBJECT TO WHICH PERMITS MAY BE GRANTED**

(1) Permits shall be subject to such conditions as the Minister may think fit to impose which shall be specified in the permit and, without derogation from the generality of this provision a permit may require that the company shall have one or more directors ordinarily resident in Bermuda and shall inform the Minister of any change in its beneficial ownership.

(2) Subject to any conditions which may be specified in a permit pursuant to subsection (1), an overseas company which has been granted a permit shall have power in Bermuda,

(a) if it is a mutual fund as defined in subsection (5), to market its shares or deal with holders of its shares in Bermuda;

(b) if it is a general partner in a limited partnership, as so defined, to market interest in, or deal with the holders of interests in, such limited partnership; or

(c) if it is the manager of a unit trust scheme, as so defined, to market units in, or deal with holders of units in, such unit trust scheme,

in accordance with subsection (3).

(3) For the purposes of subsection (2), an overseas company shall be deemed to be marketing or dealing with the holders of the shares of that overseas company, interests in a limited partnership, or units in a unit trust scheme, if it undertakes in Bermuda any of the activities specified in subsection (4).

(4) The activities referred to in subsection (3) are -

(i) the offering of such shares, interests or units for subscription or purchase by way of a prospectus or otherwise;

(ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;

(iii) the distribution of shareholder, limited partnership or unitholder information to holders of such shares, interests or units;

(iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communication with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unitholder information; and

(v) any other dealing with the holders of such shares, interests or units with respect to any such shares, interests or units held by them.

(5) In this section –

(a) “mutual fund” means a company incorporated outside Bermuda but having the characteristics set out in section 156A of this Act;

(b) “limited partnership” means a limited partnership formed under the laws of a country outside Bermuda, but having the characteristics set out in section 2(1) of the Limited Partnership Act 1883;

(c) “unit trust scheme” means a unit trust scheme formed under the laws of a country outside Bermuda, but having the characteristics set out in section 1 of the Exempted Undertakings Tax Protection Act 1966.
136A. **PRINCIPAL REPRESENTATIVE**

(1) Every permit company shall appoint and maintain a principal representative in Bermuda and shall give notice in writing to the Registrar of such particulars of its principal representative as the Minister may determine.

(2) If any particulars of a principal representative required by subsection (1) to be notified to the Registrar are altered the company shall give in writing to the Registrar particulars of the alteration within twenty-one days after the alteration is made.

(3) If a company fails to comply with the provisions of this section it shall be liable to a default fine.

137. **FORM AND PROOF OF A PERMIT**

(1) A permit shall be in such form as the Minister shall determine.

(2) A copy of every permit shall be lodged by the Minister with the Registrar.

(3) A certificate purporting to be signed by the Registrar -

(a) certifying that a permit was or was not in force in respect of an overseas company at the time specified in the certificate; and

(b) specifying the conditions of the permit,

shall be admissible in evidence in proceedings under this Act without further proof and shall be prima facie evidence of the facts certified or specified therein.

138. **ALTERATION OF CONDITIONS OF A PERMIT**

(1) The Minister may on the application of a permit company vary the terms of its permit.

(2) Where under subsection (1) the Minister varies the terms of a permit he shall notify the Registrar who shall amend his copy of the permit accordingly.

139. **REVOCATION OF A PERMIT**

The Minister may at any time revoke the permit of an overseas company if -

(a) the company or any of its servants or agents contravenes a condition of its permit;

(b) in the opinion of the Minister the company is carrying on business in a manner detrimental to the public interest;

(c) the company ceases to engage in or carry on any trade or business in Bermuda;

(d) a court or other competent authority in any country makes an order for the winding up, dissolution or judicial management of the company or of any person who directly or indirectly controls the company;

(e) the company is otherwise wound up or if any person who directly or indirectly controls the company is wound up or ceases to carry on business;

(f) there is a substantial change in the effective control of the company;

(g) there is a substantial change in the nature of the business carried on by the company;

(ga) the company does not pay the annual fee prescribed under section 135(1) within thirty days of the due date; or

(h) the company contravenes or fails to comply with any provision of this Part of this Act.
140. REVOCATION PROCEDURE

(1) The Minister shall give a company reasonable notice in writing of his intention to revoke its permit under section 139 and shall afford the company an opportunity of making representations to him.

(2) A notice under subsection (1) shall specify the ground on which the Minister intends to revoke the permit.

(3) Upon the revocation of its permit a company shall forthwith cease to engage in or carry on any trade or business in Bermuda unless the Minister in his discretion authorizes the company so to do -

   (a) pending the determination of an appeal against the revocation;
   (b) for such period as the Minister may specify for the purpose of closing its business in Bermuda.

(4) When the Minister revokes the permit of an overseas company the Registrar may, if he is satisfied that it would be in the interests of any creditor of the company or of any other person to whom the company has an obligation that the affairs of the company in Bermuda should be wound up in the same manner as a company incorporated in Bermuda, petition the Court to wind up such affairs and the Court may make such orders for the winding up of such affairs as is practicable.

141. APPEALS TO THE COURT

(1) A company aggrieved by the revocation by the Minister of its permit may appeal to the Court within twenty-one days or such longer period as the Court may allow after receipt of notification of such revocation.

(2) If an appeal is allowed by the Court, the company shall be entitled to engage in or carry on any trade or business in Bermuda in the same manner as it did before its permit was revoked.

(3) If an appeal is dismissed by the Court, the company shall, forthwith or in such time as the Minister may allow, cease to engage in or carry on any trade or business in Bermuda.

(4) The provisions of section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

142. REGISTER OF PERMIT COMPANIES

(1) The Registrar shall keep a register of permit companies in such form as he shall determine but which shall show -

   (a) the name of the company;
   (b) the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda and the address of its registered office outside Bermuda;
   (c) the date and place of its incorporation; and
   (d) a copy of its permit.

(2) The register shall be open to inspection by members of the public during ordinary office hours on payment of such fee not exceeding five dollars as the Minister may determine.

(3) Every permit company lawfully engaging in or carrying on any trade or business in Bermuda on the appointed day shall within one month of that day deliver to the Registrar -

   (i) a copy of its memorandum or in the event of it not having a memorandum, a document setting out the objects of the company, the names of the directors and their nationalities, the
trade or business it is permitted to engage in or carry on in Bermuda and the amount of its authorized and paid up share capital;

(ii) a copy of its permit;

(iii) particulars of its place or places of business in Bermuda and the address of its registered office outside Bermuda;

(iv) a list of persons resident in Bermuda authorized to accept on its behalf service of process and any notices required to be served on it.

(4) Every overseas company in receipt of a permit after the appointed day shall deliver to the Registrar such of the particulars set out in subsection (3) as it has not delivered to the Minister on its application for a permit.

(5) An alteration of any of the matters details of which are required to be delivered to the Registrar under subsection (3) shall be notified to the Registrar by every permit company within thirty days of the alteration becoming effective.

143. RESTRICTIONS ON ACTIVITIES OF A PERMIT COMPANY

Unless authorized by this Act or any other Act or its permit a permit company shall not-

(a) acquire or hold land in Bermuda except -

(i) land required for its business by way of lease or tenancy agreement for a term not exceeding fifty years; or

(ii) with the consent of the Minister granted in his discretion, land by way of lease or tenancy agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees;

(b) subject to section 144 take any mortgage of land in Bermuda;

(c) acquire any bonds or debentures secured on any land in Bermuda other than bonds or debentures issued by the Government or a public authority;

(d) [REPEALED]

(e) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise except:

(i) carrying on business with persons outside Bermuda;

(ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the permit company carried on exterior to Bermuda;

(iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities or investments issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking;

(iv) transacting banking business in Bermuda with and through an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

(v) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;
(vi) as manager or agent for, or consultant or adviser to, the business of an exempted undertaking whether or not such business is the sole business of the permit company provided that the permit company is authorised by law to carry on the kind or type of business in Bermuda;

(vii) notwithstanding the Non-Resident Insurance Undertakings Act 1967, carrying on the business of re-insuring risks undertaken by any company incorporated in Bermuda and permitted to engage in insurance and reinsurance business.

143A. PERMIT COMPANY AND RE-INSURING

Where a permit company carries on the kind or type of business specified in section 143(e)(vii) that company shall be deemed not to be a non-resident insurance undertaking.

144. POWER OF OVERSEAS AND EXEMPTED COMPANIES TO HOLD MORTGAGES

(1) Subject to subsection (2) an overseas company may hold in its corporate name a mortgage on real and personal property of every description in Bermuda in the same manner and in the same respects as a local company and shall as mortgagee have all the rights of a local company.

(2) No overseas company without the prior consent of the Minister shall take any mortgage on land in Bermuda to secure any principal sum exceeding $50,000; or whereby any such mortgage shall together with any other principal sum or sums received by any other mortgage or mortgages held by such company from the same mortgagor or mortgagors exceed the sum of $50,000:

Provided that:

(a) the Minister may withhold such consent without assigning any reason;

(b) if any overseas company enters into possession of any land in Bermuda as mortgagee it shall cause the land to be sold within five years of so entering into possession thereof, or within such further period as the Minister may from time to time sanction in any such case, and any such land which is not sold within the time hereby limited shall be liable to escheat.

(3) For the purposes of this section an exempted company shall be deemed to be an overseas company.

(4) The Minister may by rule vary the principal sum exceeding which his consent is necessary prior to the taking out of a mortgage under this section.

145. RECORDS TO BE KEPT BY PERMIT COMPANY

(1) Every permit company shall keep proper records of account with respect to the trade or business it is engaging in or carrying on or has engaged in or carried on in Bermuda, including records of account with respect to—

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

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

(c) the assets and liabilities of the company.

(2) The records of account shall be kept at the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda provided that if the records of account are kept at some place outside Bermuda, there shall be kept at an office of the permit company in Bermuda such records as will enable the directors or a principal representative referred to in section 136A(1) to ascertain with reasonable accuracy the financial position of the permit company at the end of each three month period.
(3) Every permit company shall keep, for a period of five years from the date on which they were prepared, records of account referred to in subsection (1) and, if applicable, subsection (2).

(4) A permit company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of subsection (3) shall be liable on summary conviction to a fine of seven thousand five hundred dollars.

146. PROVISIONS RELATING TO THE ENFORCEMENT OF RESTRICTIONS ON PERMIT COMPANIES

The Minister shall have the same power to appoint an inspector to investigate the affairs of a permit company as he has under section 132 to appoint an inspector to investigate the affairs of an exempted company and subsections (2) to (12) of that section shall apply mutatis mutandis to such an investigation.

147. LETTER HEADS AND SERVICE OF NOTICE

(1) Every permit company shall have the following particulars on all letters sent from a place of business in Bermuda in connection with its business -

(a) its name;
(b) its place of incorporation; and
(c) the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda.

(2) Any process or notice required to be served on an overseas company shall be sufficiently served if served on any person named in the list of persons delivered to the Registrar or the Minister pursuant to paragraph (iv) of subsection (3) of section 142 or if left at a place of business notified to the Registrar or the Minister pursuant to paragraph (iii) of such subsection.

148. OFFENCES

Where any overseas company, whether a permit company or not, fails to comply with any provision of this Part where no other penalty is provided the company, its officers and the person who appears to the court trying the case to be in charge of its affairs in Bermuda shall be liable to a fine of one thousand dollars.

149. [Section 149 repealed by 2002:6 s. 4 & Sch. 3 effective 18 June 2002]

150. EFFECT OF REPEALS OR AMENDMENTS OF OTHER ENACTMENTS AND SAVINGS

(1) Notwithstanding the repeal or amendment of any enactment by this Act, any license or permit granted under the Acts so repealed or amended enabling any overseas company to carry on business in or from within Bermuda shall continue to have effect according to the tenor thereof until such license or permit is either revoked under section 139 or the company is granted a permit under this Act.

(2) This part shall be read in addition to and not in derogation of the External Companies (Jurisdiction in Actions) Act 1885.

150A. APPLICATION OF CERTAIN SECTIONS OF ACT TO NON-RESIDENT INSURANCE UNDERTAKINGS

The provisions of sections 136A, 137(2) and (3), 138, 142, 144, 145, 146, 147 and 151 shall apply to non-resident insurance undertakings as if they were permit companies.
151. APPLICATION OF NO 41 OF 1966 TO PERMIT COMPANIES

The Exempted Undertakings Tax Protection Act 1966 shall apply to permit companies as if they were exempted companies.

PART XII - MUTUAL COMPANIES

152. INTERPRETATION

(1) In this Part unless the context otherwise requires-

“mutual company” means any company, other than a company limited by shares, or other company having a share capital, whether incorporated before or after the appointed day, which is authorized to engage in or carry on as a principal object insurance or reinsurance business of all kinds on the mutual principle.

(2) For the purposes of this Part, a mutual company shall be deemed to engage in or carry on insurance or reinsurance business on the mutual principle where the members thereof who are exposed to some contingency associate themselves together by contributing by way of premiums on the basis that if the contemplated contingency befalls any member he shall receive a compensatory payment.

153. MUTUAL COMPANIES TO CREATE AND MAINTAIN A RESERVE FUND

(1) A mutual company shall create and maintain a reserve fund of not less than an amount approved by the Minister in respect of such company.

(2) The memorandum of a mutual company shall in addition to the requirements of section 7 state the amount of its reserve fund.

(3) The reserve fund of a mutual company shall be treated in all respects as if it were share capital.

154. LIABILITY OF MEMBERS ON A WINDING UP

(1) Subsection (3) of section 7 shall not apply to mutual companies and the liability of a member of such a company in the event of it being wound up shall be limited to the premiums or any unpaid premiums or undischarged portion thereof due to the company on the date of the commencement of the winding up from such member.

(2) For the purposes of this section “premiums” means the premiums, including retrospective premium adjustments or calls payable for insurance issued or effected by a mutual company to, for or on behalf of each member of the company and any capital contribution or other such assessment that is due under the bye-laws or any other contractual obligation with a member of the company.

155. APPORTIONMENT OF ASSETS OF MUTUAL COMPANIES

When a mutual company is wound up, after its liabilities have been satisfied the person carrying out the winding up shall either apportion the remaining assets in accordance with the bye-laws of the company or if there is no provision in the bye-laws for such apportionment then in such a fair and equitable manner amongst the members of the company as such person may decide.

155A. CRITERIA FOR DETERMINING MEMBERSHIP

(1) Subject to subsection (2), a mutual company shall in its bye-laws make provision to establish the criteria by reference to which membership in the company and eligibility therefor shall be determined.
(2) Without prejudice to the generality of subsection (1) and notwithstanding sub-section (2) of section 152, the following persons shall, unless the bye-laws of the company otherwise provide, be members of a mutual company:

(a) any person who is for the time being a provisional director thereof;
(b) any person whose risks are insured, whether directly or indirectly, by the company and who has been accepted by the company as a member; or
(c) any person who provides some part of the funds necessary to establish or maintain the reserve fund of the company.

(3) For the purposes of subsection (2), the reference to a risk of a person being indirectly insured by the company is a reference to that risk being covered by the company by reinsurance through one or more intermediaries.

156. **PROVISIONS OF ACT TO APPLY TO MUTUAL COMPANIES**

(1) Subject to section 4 the provisions of this Act relating to companies limited by guarantee shall apply to all mutual companies:

Provided that the Minister from time to time may by regulations declare that any provision of this Act shall not apply to mutual companies or that in its application it shall be varied in such manner as shall be set out in the regulations.

(2) Any regulations made by the Minister under subsection (1) shall be subject to affirmative resolution procedure.

(3) For the avoidance of doubt it is declared that -

(a) sections 104 to 109 apply, with the necessary changes, to mutual companies;
(b) in sections 105 to 108 references to “shares” and to “capital” shall be read as if they were references to “membership interests” and to “a reserve fund” respectively.

**PART XIIA** - **MUTUAL FUND COMPANIES**

156A. **INTERPRETATION**

In this Part, unless the context otherwise requires, “mutual fund” means a company limited by shares, or other company having a share capital and incorporated for the purpose of investing the moneys of its members for their mutual benefit and having the power to redeem or purchase for cancellation its shares without reducing its authorized share capital and stating in its memorandum that it is a mutual fund.

156B. **REDEMPTION AND PURCHASE OF SHARES BY MUTUAL FUND**

(1) No shares of a mutual fund shall be redeemed or purchased by another mutual fund unless such shares are fully paid.

(2) [REPEALED]

156C. **REDEMPTION AND PURCHASE BY MUTUAL FUND COMPANY OF ITS OWN SHARES**

(1) A mutual fund shall, if authorized by its memorandum or bye-laws, have power to redeem or purchase for cancellation its issued shares at the option of the company or at the option, or on the request, of a member.

(2) A mutual fund, on the redemption or purchase of its own shares, may -
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(a) repay the capital paid up on such shares out of paid in capital, share premium or other
reserves of the company;

(b) pay the premium, if any, out of realised or unrealised profits, share premium or other
reserves of the company, on such terms and in such manner and at such price as may be
determined having regard to the asset value of such shares as ascertained in accordance
with the bye-laws of the mutual fund.

(3) The redemption or purchase of its own shares by a mutual fund shall not be taken as reducing its
authorized share capital and a mutual fund shall have power to issue shares equal in aggregate par value to
the aggregate par value of the shares so redeemed or purchased as if those shares had never been issued and
the issuance of such shares under the power herein contained shall not be taken as increasing the amount of
its issued share capital.

(4) The power of a mutual fund referred to in subsection (3) shall be exercisable by the directors of the
mutual fund.

156D. [REPEALED]

156E. PRIVATE ACT COMPANIES INCORPORATED WITH CERTAIN POWERS DEEMED TO BE
MUTUAL FUNDS

Every company incorporated by private Act and having the power to redeem or purchase for cancellation its
issued shares at the option of, or on the request of, a member shall be deemed for the purpose of this Act to
be a mutual fund.

156F. CERTAIN SECTIONS DO NOT APPLY TO MUTUAL FUND

Sections 40, 42, 42A, 42B, 54(1)(b), 65(6) and 66 shall not apply to a mutual fund.

156G. PROVISIONS APPLICABLE TO CERTAIN COMPANIES INCORPORATED AFTER
APPOINTED DAY

Every company incorporated after the appointed day and before the commencement of the Companies
Amendment Act 1984 having the power to redeem or purchase for cancellation its issued shares or any class
of shares at the option of, or on the request of, a member and which is an open-ended company (as defined
in Part II of the Fifth Schedule) shall be deemed for the purposes of this Act to be a mutual fund and to have
and always to have had the powers set out in section 156C.

156H. CERTIFICATION BY THE MINISTER OF FUND AS UNITED KINGDOM CLASS SCHEME

Subject to section 156I, upon application by a mutual fund, the Minister may, in such form as he may
determine, certify that the mutual fund is, in his opinion, a United Kingdom class scheme.

156I. CONDITIONS TO BE SATISFIED FOR CERTIFICATION

(1) The Minister shall not certify a mutual fund in accordance with the provisions of section 156H
unless he is satisfied that -

(a) the applicant is a mutual fund within the meaning of this Part;

(b) the applicant is in compliance with the provisions of this Act;

(c) the custodian of the mutual fund is a bank incorporated in Bermuda;

(d) the manager of the mutual fund is a company incorporated in Bermuda which is separate
and apart from the custodian and is in compliance with the provisions of this Act;
(e) the mutual fund is fit and proper to be approved as a United Kingdom Class scheme;
(f) the bye-laws of the mutual fund comply with such requirements as are prescribed;
(g) the members of the mutual fund are entitled to have their shares redeemed or purchased by
the fund in accordance with the bye-laws of the fund;
(h) the officers, directors, manager and custodian of the mutual fund are of good standing and
repute, financially sound, and have sufficient qualifications and experience to fulfill
properly their respective roles; and
(i) the custodian and manager of the mutual fund are or will, upon certification, be
participants in a compensation arrangement.

(2) For the purposes of this section and section 156O(2) -

“compensation arrangement” means an arrangement, approved by the Minister, in which the
custodian and manager of a mutual fund are participants, providing for compensation to any
member or former member of the mutual fund who has suffered loss as a result of any material
breach by the custodian or manager of the fund -

(i) of the bye-laws of the fund; or
(ii) of any provision of this Act;

and where the custodian or manager, as the case may be, is or is likely to be unable otherwise to satisfy any
judgment against it for such breach.

156J. RIGHT OF MEMBER TO BRING ACTION AGAINST CUSTODIAN OR MANAGER FOR LOSS
SUFFERED AS A RESULT OF BREACH OF BYE-LAWS

A member or a former member of a mutual fund certified under section 156H shall have a right of action
against the custodian or manager of the fund, as the case may be, for any loss incurred by him as a result of
any material breach of the bye-laws of the fund by the custodian or manager respectively; or as a result of
any material breach by the custodian or manager respectively of any provision of this Act, subject to the
defenses applying to action for breach of statutory duty.

156K. POWER OF MINISTER TO REQUIRE RECTIFICATION WHERE FUND NO LONGER
COMPLIES WITH STATUTORY CONDITIONS

Where the Minister is of the opinion that any of the conditions set forth in section 156I are no longer fulfilled
by a mutual fund, he shall immediately notify the mutual fund thereof and may, after affording the mutual
fund an opportunity of making representation to him, require rectification thereof within such reasonable
time as shall be set out in the said notice, failing which rectification as aforesaid, the Minister may revoke the
certification made under section 156H, and so notify the mutual fund and the Secretary of State of the
United Kingdom or his designate.

156L. CUSTODIAN AND MANAGER REQUIRED TO BE INDEPENDENT OF ONE ANOTHER

The custodian and manager of a mutual fund certified under section 156H shall in fulfilling their respective
duties act independently of one another.

156M. MANAGER OF FUND DEEMED TO BE AN OFFICER OF FUND

For the purposes of this Act the manager of a mutual fund certified under section 156H shall be deemed to
be an officer of such fund whether or not such manager would otherwise be treated as an officer of the fund
for the purposes of this Act.
156N. **POWER OF DIRECTORS TO AMEND BYE-LAWS TO ENSURE COMPLIANCE WITH PRESCRIBED REQUIREMENTS**

(1) Notwithstanding section 13(5), the directors of a mutual fund certified under section 156H shall have the right to amend the bye-laws of the mutual fund to the extent required to ensure continued compliance of such bye-laws with the requirements prescribed from time to time and no such amendment shall require the approval of the company in general meeting.

(2) Notwithstanding anything in this Act contained, no amendment may be made to the bye-laws of a mutual fund certified under section 156H if the effect thereof would be that the bye-laws of the mutual fund would no longer comply with such requirements as are prescribed from time to time.

156O. **POWER OF THE MINISTER TO DIRECT CUSTODIAN OR MANAGER OF FUND TO FURNISH INFORMATION**

(1) For the purposes of obtaining any information which the Minister needs to ensure that the provisions of this Part are fulfilled, the Minister may direct the custodian or the manager of a mutual fund certified under section 156H to furnish him with such information in such form and manner and within such time as he may specify.

(2) The custodian and manager of a mutual fund certified under section 156H shall furnish the trustee or administrator of any compensation arrangement with such information as he may require for the proper performance of his duties as such.

156P. **REGULATIONS**

(1) The Minister may make regulations prescribing anything required or authorised to be prescribed under this Part and generally for the better carrying out of the provisions of this Part.

(2) Subject to subsection (3), the Minister shall-

   (a) cause a copy of all regulations made under this Part to be available at the office of the Registrar of Companies for inspection by any interested person free of charge at any time when the office of the Registrar of Companies is open to the public;

   (b) cause to be published in the Gazette a notice briefly describing the nature of any regulations made under this Part, stating the date on which such regulations are to come into operation and that such regulations may be inspected at the office of the Registrar of Companies.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to any regulations made under this Part. The provisions of subsection (2) shall be deemed to be deposit for public inspection for the purpose of subsection (1) of section 5 of that Act.

**PART XIII - WINDING UP**

157. **MODES OF WINDING UP**

The winding up of a company may be either by the Court or voluntary and this Act, subject to any other Act, shall be applied to the winding up of a company by either of these modes.

158. **LIABILITY AS CONTRIBUTORIES OF PRESENT AND PAST MEMBERS**

Subject to section 158A, in the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications -
a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

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

(c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the special provisions relating to mutual companies, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(ee) in the case of an unlimited liability company there shall be no limitation on the liability of any member;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character as a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

**158A. WINDING UP OF LIMITED COMPANY THAT WAS FORMERLY UNLIMITED**

(1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered as a company limited by shares or by guarantee under section 14B.

(2) Notwithstanding section 158(a), a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of three years beginning on the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as provided in subsection (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under this Act.

(4) Subsection (3) applies subject to section 158(a) and to subsection (2), but notwithstanding section 158(c).

(5) Notwithstanding section 158(d) and (e), there is no limit on the amount which a person who, at that time, was past or present member of the company is liable to contribute.
159. DEFINITION AND NATURE OF LIABILITY OF A CONTRIBUTORY

(1) The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings prior to the final determining of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

160. CONTRIBUTORIES IN A CASE OF DEATH OR BANKRUPTCY OF A MEMBER

(1) If a contributory dies either before or after he has been placed on the list of contributories, his estate representatives shall be liable in the due course of the administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the estate representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

(3) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories –

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the estate of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

161. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP BY THE COURT

In addition to any other provision in this or any other Act prescribing for the winding up of a company a company may be wound up by the Court if -

(a) the company has by resolution resolved that the company be wound up by the Court;

(b) subject to section 88 default is made in holding the statutory meeting or failing to comply with section 84 or section 89;

(c) the company does not commence its business within a year of its incorporation or suspends its business for a whole year;

(ca) the company carries on any restricted business activity in contravention of section 4A;

(d) the company engages in a prohibited business activity in contravention of section 4B;

(e) the company is unable to pay its debts;

(f) the consent by the Minister, where under this Act such consent was required, was obtained as a result of a material misstatement in the application for consent; or

(g) the Court is of the opinion that it is just and equitable that the company should be wound up.
162. **DEFINITION OF INABILITY TO PAY DEBTS**

A company shall be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred dollars then due has served on the company, by leaving it at the registered office of the company, a demand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if the execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts; in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

163. **PROVISIONS AS TO APPLICATIONS FOR WINDING UP**

(1) An application to the Court for the winding up of a company shall be by petition, presented either by the company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories, or by all of those parties, together or separately:

Provided that—

(a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were allotted to him or have been held by him and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) a winding up petition shall not, if the ground of the petition is default in holding the statutory meeting, be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court; and

(d) in a case falling within paragraph (g) of section 161 the winding up petition may be presented by the Registrar.

(2) When a company is being wound up voluntarily a winding up petition may be presented by the Official Receiver as well as by any other person authorized in that behalf under this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or contributories.

(3) Where the petition is presented on the ground that a material mis-statement was made in the application for the consent of the registration of the company the Court shall not make a winding up order unless it is satisfied—

(a) that but for the mis-statement the consent of the Minister would not have been given; and

(b) that an order winding up the company will not cause hardship to any person who was not responsible for the mis-statement.
(4) Where the petition is presented on the ground that a material mis-statement was made in the application for the consent for the registration of the company the Court, if it finds that a material mis-statement was made, whether it makes an order winding up the company or not, may -

(a) impose on the company a fine of two thousand dollars; and

(b) require the company to pay the costs of the proceedings.

164. POWERS OF COURT ON HEARING PETITION

(1) On hearing a winding up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of the opinion, -

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in holding the statutory meeting the Court may -

(a) instead of making a winding up order, direct that a meeting shall be held; and

(b) order the costs to be paid by any person who, in the opinion of the Court, is responsible for the default.

165. POWERS TO STAY OR RESTRAIN PROCEEDINGS AGAINST A COMPANY

(1) At any time after the presentation of a winding up petition, and before a winding up order has been made, the company or any creditor or contributory may, where an action or proceeding against the company is pending, apply to the Court for a stay of those proceedings.

(2) On an application being made under subsection (1) the Court may stay the proceedings accordingly on such terms as it thinks fit.

166. AVOIDANCE OF DISPOSITIONS OF PROPERTY ETC. AFTER COMMENCEMENT OF WINDING UP

(1) In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

(2) Where any company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.
167. **COMMENCEMENT OF WINDING UP BY THE COURT**

(1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

(3) On the making of a winding up order, a copy of the order must forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

(4) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

(5) An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

168. **STATEMENT OF COMPANY AFFAIRS TO BE SUBMITTED TO OFFICIAL RECEIVER**

(1) Where the Court has made a winding up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons -

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the Official Receiver capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within thirty days from the relevant date or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses, incurred in and about the preparation and making of the statement and affidavit, as the Official Receiver may consider reasonable, subject to an appeal to the Court.
(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a default fine.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and a copy thereof or extract therefrom.

(7) Any person falsely stating himself to be a creditor or contributory shall be liable to a fine of one thousand dollars or imprisonment for a period of six months or both such fine and imprisonment.

(8) In this section the expression “the relevant date” means, in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding up order.

169. REPORT BY OFFICIAL RECEIVER

(1) In a case where a winding-up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court -

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 196.

170. POWER OF COURT TO APPOINT LIQUIDATORS

(1) For the purpose of conducting proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may on the presentation of a winding up petition or at any time thereafter and before the first appointment of a liquidator appoint a provisional liquidator who may be the Official Receiver or any other fit person.

(3) When the Court appoints a provisional liquidator, the Court may limit his powers by the order appointing him.

171. PROVISIONS RELATING TO THE APPOINTMENT OF LIQUIDATORS

The following provisions with respect to liquidators shall have effect on a winding-up order being made -

(a) if the Court has appointed no other provisional liquidator prior to the winding up order being made the Official Receiver shall become the provisional liquidator and he or the
provisional liquidator appointed by the Court shall continue to act as provisional liquidator
until another person becomes liquidator and is capable of acting as such;

(b) the provisional liquidator shall summon separate meetings of the creditors and
contributories of the company for the purpose of determining whether or not an application
is to be made to the Court for appointing a liquidator in the place of the provisional
liquidator;

(c) the Court may make any appointment and order required to give effect to any such
determination and, if there is a difference between the determinations of the meetings of the
creditors and contributories in respect of the matter aforesaid, the Court shall decide the
difference and make such order thereon as it thinks fit;

(d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the
liquidator of the company;

(e) the Official Receiver shall be the liquidator during any vacancy;

(f) a liquidator shall be described when a person other than the Official Receiver is liquidator,
by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of
“the Official Receiver and liquidator”, of the particular company in respect of which he is
appointed and not by his individual name.

172. PROVISIONS WHERE PERSON OTHER THAN OFFICIAL RECEIVER IS APPOINTED
LIQUIDATOR

Where, in the winding up of a company by the Court, a person other than the Official Receiver is appointed
liquidator, that person -

(a) shall not be capable of acting as liquidator until he has notified his appointment to the
Registrar and given security in the prescribed manner to the satisfaction of the Registrar;

(b) shall give the Official Receiver such information and such access to and facilities for
inspecting the books and documents of the company and generally such aid as may be
requisite for enabling that officer to perform his duties under this Act.

173. GENERAL PROVISIONS AS TO LIQUIDATORS

(1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary
or remuneration by way of percentage or otherwise as the Court may direct, and, if more persons than one
are appointed liquidators, their remuneration shall be distributed among them in such proportion as the
Court directs.

(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(4) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by
this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the
persons appointed.

(5) Subject to section 249, the acts of a liquidator shall be valid notwithstanding any defects that may
afterwards be discovered in his appointment or qualifications.
174. CUSTODY AND VESTING OF COMPANY'S PROPERTY

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) Where a company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

175. POWERS OF LIQUIDATOR

(1) The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection-

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(c) to appoint an attorney to assist him in the performance of his duties;

(d) to pay any classes of creditors in full;

(e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the Court shall have power -

(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company’s seal;

(c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
(d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(e) to raise on the security of the assets of the company any money required;

(f) to take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to appoint an agent to do any business which the liquidator is unable to do himself;

(h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

176. EXERCISE AND CONTROL OF LIQUIDATOR’S POWERS

(1) Subject to this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is dissatisfied by any act, omission or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and may give such directions or make such order in the premises as it thinks just.

177. BOOKS TO BE KEPT BY LIQUIDATOR

Every liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.
178. RELEASE OF LIQUIDATORS

(1) When the liquidator of a company which is being wound up by the Court has realized all the property of the company or as much thereof as can, in his opinion, be realized without needlessly protracting the liquidation and has distributed a final dividend, if any, to the creditors and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Court shall on his application and on his complying with all its requirements after hearing any objection that may be urged by any creditor, contributory or person interested against the release of the liquidator either release or withhold his release.

(2) An appeal shall lie to the Court of Appeal against a decision withholding the release of a liquidator under subsection (1).

179. RECEIPTS BY LIQUIDATORS

(1) Every liquidator of a company which is being wound up by the Court shall deal with the money received by him in such manner as the Court shall direct.

(2) If any liquidator at any time retains for more than thirty days a sum exceeding five thousand dollars after he has received directions of the Court as to how he is to deal with the money, he shall pay interest on the sum so retained at the statutory rate of interest fixed under the Interest and Credit Charges (Regulation) Act 1975 unless the Court otherwise orders.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

180. AUDIT OF LIQUIDATORS’ ACCOUNTS

Every liquidator of a company which is being wound up by the Court shall at such times as the Court shall direct send to the Court audited accounts of his receipts and payments as liquidator.

181. MEETINGS OF CREDITORS AND CONTRIBUTORIES TO DETERMINE WHETHER COMMITTEE OF INSPECTION SHALL BE APPOINTED

(1) When a winding-up order has been made by the Court, it shall be the business of the separate meetings of the creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the Court may think fit.

182. CONSTITUTION AND PROCEEDINGS OF COMMITTEE OF INSPECTION

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories to the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed upon by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

(2) The Committee shall meet at such times as it shall from time to time determine and the liquidator and any member of the committee may also call a meeting of the committee as and when either of them consider it necessary.
(3) The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

183. POWERS OF REGISTRAR WHERE NO COMMITTEE OF INSPECTION

Where in the case of a winding up there is no committee of inspection, the Registrar may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by a committee.

184. POWER TO STAY WINDING UP

(1) The Court may at any time after an order for winding up on the application either of the liquidator or the Official Receiver or any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) Where the Court makes an order staying the proceedings altogether it may on hearing the liquidator, the Official Receiver, if he desires to be heard, and the interested creditors or contributories make such orders it considers desirable to enable the company to be as near as practicable as it was before the winding-up order was made.

(3) On any application under this section the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.
185. SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS

(1) As soon as may be after making a winding-up order, the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of the contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives or liable for the debts of others.

186. DELIVERY OF PROPERTY TO LIQUIDATOR

The Court may, at any time after making a winding-up order, require any contributory for the time being on list of contributories and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled.

187. PAYMENT OF DEBTS DUE BY CONTRIBUTORY TO COMPANY AND EXTENT TO WHICH SET-OFF ALLOWED

(1) The court may, at any time after making a winding-up order make an order on any contributory for the time being on list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any company when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

188. POWER OF COURT TO MAKE CALLS

(1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

189. ORDER ON CONTRIBUTORY CONCLUSIVE EVIDENCE

(1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

190. APPOINTMENT OF SPECIAL MANAGER

(1) Where in proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the
191. **POWER TO EXCLUDE CREDITORS NOT PROVING IN TIME**

The Court may fix a time or times within which creditors are to prove their debts or claims or be excluded from the benefit of any distribution made before those debts are proved.

192. **ADJUSTMENT OF RIGHTS OF CONTRIBUTORIES**

The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

193. **INSPECTION OF BOOKS BY CREDITORS AND CONTRIBUTORIES**

(1) The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

194. **POWER TO ORDER COSTS OF WINDING UP TO BE MADE OUT OF ASSETS**

The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

195. **POWER TO SUMMON PERSONS SUSPECTED OF HAVING PROPERTY OF COMPANY ETC.**

(1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or persons known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The Court may examine such person on oath, concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require such person to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.
196. POWER TO ORDER PUBLIC EXAMINATION OF PROMOTER AND OFFICER

(1) Where an order has been made for winding up a company by the Court the Official Receiver may make a report under this Act stating that in his opinion any person in the promotion or formation of the company or any officer of the company since its formation has been guilty of fraud or dishonesty or has been in default in complying with the provisions of the law relating to companies or has shown himself to have acted in an improper, reckless or incompetent manner in relation to the company’s affairs.

(2) Where a report is made to the Court under subsection (1) the Court may, after consideration of the Official Receiver’s report, direct that the person or officer referred to in the report shall attend before the Court on a day appointed for that purpose and be publicly examined as to his conduct in relation to the company.

(3) The Official Receiver shall take part in the examination either in person or by attorney.

(4) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by attorney.

(5) The Court may put such questions to the person examined as the Court thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(7) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the Official Receiver’s report, and may at his own cost employ an attorney who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) An examination under this section, may if the Court so directs, be held by any person appointed by the Court for that purpose. Such person shall have all the powers of the Court in conducting such examination.

197. POWER TO ARREST ABSCONDING CONTRIBUTORY

The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Bermuda or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court may order.

198. POWERS OF COURT CUMULATIVE

Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any call or other sums.
199. DELEGATION TO LIQUIDATOR OF CERTAIN POWERS OF THE COURT

(1) The Chief Justice may make rules enabling all or any of the powers and duties conferred or imposed on the Court by this Act in respect of the following matters -

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(d) the making of calls;
(e) the fixing of a time within which debts and claims must be proved;
(f) the use of electronic means of communication,

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

(2) Rules made under subsection (1) shall not be subject to Parliamentary scrutiny by virtue of section 6 of the Statutory Instruments Act 1977.

199A. EARLY DISSOLUTION

(1) This section applies where an order for the winding up of a company has been made by the Court.

(2) The Official Receiver, if -

(a) he is the liquidator of the company, and
(b) it appears to him -

(i) that the realisable assets of the company are insufficient to cover the expenses of the winding up; and
(ii) that the affairs of the company do not require any further investigation,

may at any time apply to the Registrar for the early dissolution of the company.

(3) Before making that application, the Official Receiver shall give not less than twenty-eight days’ notice of his intention to do so to the company’s creditors and contributories and, if there is a receiver of the company, to that receiver.

(4) With the giving of that notice the Official Receiver ceases (subject to any directions under section 199B) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2).

(5) On the receipt of the Official Receiver’s application under subsection (2) the Registrar shall forthwith register it and, at the end of the period of three months beginning with the day of the registration of the application, the company shall be dissolved; however, the Minister may, on the application of the Official
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Receiver or any other person who appears to the Minister to be interested, give directions under section 199B at any time before the end of that period.

199B. CONSEQUENCES OF NOTICE UNDER SECTION 199A

(1) Where a notice has been given under section 199A(3), the Official Receiver or any creditor of or contributory to the company or the receiver of the company (if there is one) may apply to the Minister for directions under this section.

(2) The grounds on which that application may be made are -

(a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section -

(a) are directions making such provision as the Minister thinks fit for enabling the winding up of the company to proceed as if no notice had been given under section 199A(3), and

(b) may, in the case of an application under section 199A(5), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Minister thinks fit.

(4) An appeal to the Court lies from any decision of the Minister on an application for directions under this section.

(5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination of the appeal, to deliver to the Registrar for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine of two hundred and fifty dollars and, for continued contravention, to a daily default fine.

200. DISSOLUTION OF COMPANY

(1) When the affairs of a company have been completely wound up, the Court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

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

201. CIRCUMSTANCES IN WHICH A COMPANY MAY BE WOUND UP VOLUNTARILY

A company shall be wound up voluntarily -

(a) when the company resolves in general meeting that the company be wound up voluntarily; or

(b) pursuant to section 201A.
201A. APPOINTMENT OF LIQUIDATOR AND DISSOLUTION OF COMPANY OF LIMITED DURATION

(1) A company shall be wound up voluntarily upon the expiration of the period fixed for the duration of the company by its incorporating Act or its memorandum or upon the occurrence of the event on the occurrence of which its incorporating Act or its memorandum provides that the company is to be dissolved and thereafter the company shall be dissolved in accordance with this Part.

(2) Where a company is being wound up pursuant to subsection (1) -

(a) references in this Part to the resolution for voluntary winding up shall be deemed to be references to the expiration of the period, or the occurrence of the event, referred to in subsection (1);

(b) section 216(1) shall be read as requiring the meeting of the creditors of the company to be summoned within thirty days of the expiration of the period, or the occurrence of the event, referred to in subsection (1);

(c) sections 208(1), 216(5) and 230 shall not apply to the company.

(3) Subject to section 227, where a company is being wound up pursuant to subsection (1) by way of members’ voluntary winding up, within ninety days after the expiration of the period, or the occurrence of the event, referred to in that subsection the members of the company shall appoint one or more liquidators for the purpose of winding up the affairs, and distributing the assets, of the company, and may fix their remuneration, and in the absence of such an appointment within that time period, the Official Receiver shall be the liquidator.

(4) Where a company is being wound up pursuant to subsection (1) by way of a creditor’s voluntary winding up and no liquidator has been appointed within ninety days after the expiration of the period, or the occurrence of the event, referred to in subsection (1), the Official Receiver shall be the liquidator.

202. NOTICE OF RESOLUTION TO WIND UP VOLUNTARILY

(1) Where a company is being wound up voluntarily, then within twenty-one days after-

(a) the expiration of the period fixed for the duration of the company by its incorporating Act or memorandum;

(b) the occurrence of the event, on the occurrence of which the incorporating Act or memorandum provides that the company is to be dissolved; or

(c) the passing of the resolution that the company be wound up voluntarily,

the company shall give notice thereof by advertisement in an appointed newspaper.

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

203. COMMENCEMENT OF VOLUNTARY WINDING UP

A voluntary winding up shall be deemed to commence-

(a) on the expiration of the period, if any, fixed in the incorporating Act or the memorandum for the duration of a company;

(b) on the occurrence of the event, if any, on the occurrence of which it is provided in the incorporating Act or the memorandum that a company is to be dissolved; or
204. EFFECT OF VOLUNTARY WINDING UP ON BUSINESS AND STATUS OF COMPANY

In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

Provided that the corporate state and corporate powers of the company shall, notwithstanding any thing to the contrary in its memorandum or bye-laws, continue until it is dissolved.

205. AVOIDANCE OF TRANSFERS ETC. AFTER COMMENCEMENT OF VOLUNTARY WINDING UP

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up shall be void.

206. STATUTORY DECLARATION OF SOLVENCY IN CASE OF PROPOSAL TO WIND UP VOLUNTARILY

(1) Where it is proposed to wind up a company voluntarily, the majority of the directors, shall each make a statutory declaration to the effect that they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless:

(a) it is made within five weeks immediately preceding -

   (i) the expiration of the period, if any, fixed in the incorporating Act or the memorandum for the duration of the company;

   (ii) the occurrence of the event, if any, on the occurrence of which it is provided in the incorporating Act or the memorandum that the company is to be dissolved; or

   (iii) the date of the passing of the resolution for voluntarily winding up,

   and is delivered to the Registrar for registration before that date;

(b) it embodies either -

   (i) a statement of the company’s assets and liabilities as at the latest practicable date before the making of the declaration; or

   (ii) a statement to the effect that the opinion of the directors was based on an indemnity, undertaking or pledge made in favour of the company in respect of its liabilities.

(3) Any director of a company making a declaration under this section without having any reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment for a period of six months or to a fine of two thousand five hundred dollars or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as “a member’s voluntary winding up”, and a winding up in the case of
which a declaration has not been made and delivered as aforesaid is in this Act referred to as “a creditors’ voluntary winding up”.

207. **PROVISIONS APPLICABLE TO MEMBERS’ WINDING UP**

The provisions contained in the seven sections next following shall, subject to the provisions of the last of them, apply in relation to a members’ voluntary winding up.

208. **POWER OF COMPANY TO APPOINT AND FIX REMUNERATION OF LIQUIDATORS**

(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix their remuneration.

(2) On the appointment of a liquidator all the powers of the officers shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof.

209. **POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR**

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the bye-laws, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

210. **POWER OF LIQUIDATOR TO ACCEPT SHARES ETC AS CONSIDERATION FOR SALE OF PROPERTY OF COMPANY**

(1) Where a company is proposed to be, or is in the course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company whether a company within the meaning of this Act or not, in this section called “the transferee company”, the liquidator of the first-mentioned company, in this section called “the transferor company”, may, with the sanction of a resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests or in addition thereto, participate in the profits or receive any other benefits from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration.

(4) If the liquidator elects to purchase the member’s interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by resolution.
A resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the Court, the resolution shall not be valid unless sanctioned by the Court.

**211. DUTY OF LIQUIDATOR TO CALL CREDITORS’ MEETING IN CASE OF INSOLVENCY**

(1) If the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 206 he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding two hundred and fifty dollars.

**212. DUTY OF LIQUIDATOR TO CALL GENERAL MEETING AT END OF EACH YEAR.**

(1) Subject to section 214, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty dollars.

**213. FINAL MEETING AND DISSOLUTION: MEMBERS VOLUNTARY WINDING-UP**

(1) Subject to section 214, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in an appointed newspaper, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting the liquidator shall notify the Registrar that the company has been dissolved and the Registrar shall record that fact and the date of the dissolution in the appropriate register:

Provided that, if a quorum is not present at the meeting the liquidator, in lieu of notifying the Registrar as here before mentioned, shall notify him that the meeting was duly summoned and that no quorum was present thereat and on such notification the requirements of this subsection shall be deemed to have been complied with.

(4) If the liquidator fails to call a general meeting of the company as required by this section or fails to comply with the requirements of subsection (3), he shall be liable to a default fine.

**214. ALTERNATIVE PROVISIONS AS TO ANNUAL AND FINAL MEETINGS IN CASE OF INSOLVENCY**

Where section 211 has effect, sections 222 and 223 shall apply to the winding up, as if the winding up were a creditor’s voluntary winding up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 222 at the end of the first year from the commencement of the winding up, unless the meeting held under section 211, is held more than three months before the end of the year.
215. **PROVISIONS APPLICABLE TO CREDITORS' WINDING UP**

The provisions contained in the eight sections next following shall apply in relation to a creditor’s voluntary winding up.

216. **MEETING OF CREDITORS**

(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the next day following the day, on which there is to be held the meeting which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of creditors to be advertised in an appointed newspaper on at least two occasions.

(3) The directors of the company shall -

   (a) cause a full statement of the position of the company’s affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

   (b) appoint one of their number to preside at such meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it has been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made -

   (a) by the company in complying with subsections (1) and (2) of this section;

   (b) by the directors of the company in complying with subsection (3) of this section;

   (c) by any director of the company in complying with subsection (4) of this section,

the company, directors or director, as the case may be, shall be liable to a fine of five hundred dollars, and in the case of default by the company, every officer of the company who is in default shall be liable to like penalty.

217. **APPOINTMENT OF LIQUIDATOR**

The creditors and the company at their respective meetings mentioned in the last foregoing section may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.
218. APPOINTMENT OF COMMITTEE OF INSPECTION

(1) The creditors at the meeting to be held in pursuance of section 216 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to this section and to general rules, section 182 except subsection (1), shall apply with respect to a committee of inspection appointed under this section as it applies with respect to a committee of inspection appointed in a winding up by the Court.

219. FIXING OF LIQUIDATOR’S REMUNERATION AND CESSOR OF OFFICERS’ POWERS

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the officers shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

220. POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

221. APPLICATION OF S. 210 TO A CREDITORS’ VOLUNTARY WINDING UP

Section 210 shall apply in the case of a creditors’ voluntary winding up as in the case of a members’ voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

222. DUTY OF LIQUIDATOR TO CALL MEETINGS OF COMPANY AND CREDITORS AT END OF EACH YEAR

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty dollars.

223. FINAL MEETING AND DISSOLUTION

(1) As soon as the affairs of the company are fully wound up, the liquidator shall make an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.
(2) Each such meeting shall be called by advertisement in an appointed newspaper specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if the person fails to do so he shall be liable to a default fine.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine of two hundred and fifty dollars.

224. PROVISIONS APPLICABLE TO EVERY WINDING UP

Sections 225 to 233 shall apply to every winding up whether a member’s or a creditor’s winding up.

225. DISTRIBUTION OF PROPERTY OF COMPANY

Subject to this Act as to preferential payment the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to such application, shall, unless the bye-laws otherwise provide, be distributed among the members according to their rights and interests in the company.

226. POWERS AND DUTIES OF LIQUIDATOR IN VOLUNTARY WINDING UP

(1) The liquidator may -

(a) in the case of a member’s voluntary winding up, with the sanction of a resolution of the company, and, in the case of a creditor’s voluntary winding up, with the sanction of the Court or the committee of inspection or if there is no such committee a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 175 to a liquidator in a winding up by the Court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court to make calls;
(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

227. POWER OF COURT TO APPOINT AND REMOVE LIQUIDATOR IN VOLUNTARY WINDING UP

(1) If for any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

228. NOTICE BY LIQUIDATOR OF HIS APPOINTMENT

(1) The liquidator shall, within twenty-one days after his appointment, publish in an appointed newspaper and deliver to the Registrar for registration a notice of his appointment.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a default fine.

229. ARRANGEMENT WHEN BINDING ON CREDITORS

(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a resolution and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

230. LIQUIDATORS POWER TO STAY VOLUNTARY WINDING UP

(1) The liquidator of a company may at any time after he has been appointed stay the winding up either altogether or for a limited time if he is satisfied that such a stay is in the best interests of the contributories or the creditors.

(2) The liquidator shall three weeks prior to staying the winding up of a company under subsection (1) publish in an appointed newspaper his intentions and his reasons for so doing and shall give notice of such intention to the Registrar.

(3) The Official Receiver or any contributory or creditor may within three weeks of the publication of a notice under subsection (2) apply to the Court under section 231 for an order requiring the liquidator to continue the winding up proceedings.

(4) When a liquidator stays the winding up of a company altogether he shall, after the period allowed for an application under subsection (3) has expired, take such steps as he considers desirable to enable the company to be as near as practicable as it was before the resolution to wind up the company was made.
231. POWER TO APPLY TO COURT TO HAVE QUESTIONS DETERMINED OR POWERS EXERCISED

(1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed to the Registrar who shall make a minute of the order in his books relating to the company.

232. COSTS OF VOLUNTARY WINDING UP

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

233. SAVING FOR RIGHTS OF CREDITORS AND CONTRIBUTORIES

The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

234. DEBTS OF ALL DESCRIPTION MAY BE PROVED

In every winding up, subject in the case of insolvent companies to the rules of bankruptcy as applied by this Act all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

235. APPLICATION OF BANKRUPTCY RULES IN WINDING UP OF INSOLVENT COMPANIES

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

236. PREFERENTIAL PAYMENTS

(1) In a winding up there shall be paid in priority to all other debts -

(a) all taxes owing to the Government and rates owing to a municipality at the relevant date;

(b) all wages or salary, whether or not earned wholly or in part by way of commission or whether payable for time or piece work of any employee of the company in respect of services rendered to the company during four months next before the relevant date;

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding-up order or resolution;
(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the company as the employer of any persons under the Contributory Pensions Act 1970 or any contract of insurance;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another company, or unless the company has, at the commencement of the winding up, under a contract with insurers capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen’s Compensation Act 1965, being amounts which have accrued before the relevant date.

(2) Notwithstanding anything in paragraph (b) of the foregoing subsection, the sum to which priority is to be given under subsection (1)(b) shall not, in the case of any one claimant, exceed two thousand five hundred dollars:

Provided that where a claimant under the said paragraph (b) has entered into a contract for the payment of a portion of his wages in a lump sum or for the payment of a gratuity at the end of his hiring, he shall have priority in respect of the whole of each sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen’s Compensation Act 1965, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (e) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made -

(a) to any employee of a company, on account of wages or salary; or

(b) to any such employee or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall -

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (d) of subsection (1) of this section formal proof thereof shall not be required.
(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purpose of this section -

(a) any remuneration in respect of a period of holiday or absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression “accrued holiday remuneration” includes in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment, including any order made or direction given under an Act, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday;

(c) the expression “the relevant date” means -

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment, or first appointment, of a provisional liquidator, or, if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where the foregoing sub-paragraph does not apply, means the date of the passing of the resolution for the winding up of the company.

237. FRAUDULENT PREFERENCE

(1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

238. LIABILITY AND RIGHTS OF CERTAIN FRAUDULENTLY PREFERRED PERSONS

(1) Where anything made or done is void under the last foregoing section as a fraudulent preference of a person interested in property mortgaged or charged to secure the company’s debt, then, without prejudice to any rights or liabilities arising apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debts to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person’s interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the company’s debts was then subject.
(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

239. EFFECT OF FLOATING CHARGE

(1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the statutory rate fixed under the Interest and Credit Charges (Regulation) Act 1975.

240. DISCLAIMER OF ONEROUS PROPERTY

(1) The liquidator of a company may with the leave of the Court disclaim any property belonging to the company whether real or personal including any right of action or right under a contract which in his opinion is onerous for the company to hold or is unprofitable or unsaleable.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(5) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

241. RESTRICTION OF RIGHTS OF CREDITOR AS TO EXECUTION OR ATTACHMENT IN CASE OF COMPANY BEING WOUND UP

(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up.
Provided that -

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purpose of the foregoing provision, be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by the Provost Marshal any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure or by the appointment of a receiver.

(3) In this and the next section the expression “goods” includes all chattels personal, and the expression Provost Marshal includes any officer charged with the execution of a writ or other process.

242. DUTIES OF PROVOST MARSHAL AS TO GOODS TAKEN IN EXECUTION

(1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Provost Marshal that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the Provost Marshal shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding five hundred dollars the goods of a company are sold or money is paid in order to avoid sale, the Provost Marshal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Provost Marshal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

243. OFFENCES BY OFFICERS OF COMPANIES IN LIQUIDATION

(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up -

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of three hundred dollars or upwards, or conceals any debt due to or from the company; or

e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of fifty dollars or upwards; or

f) makes any material omission in any statement relating to the affairs of the company; or

g) knowing or believing that a false debt has been proved by any person under winding up, fails for the period of a month to inform the liquidator thereof, or

h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

i) within twelve months next before the commencement of the winding up or at any time thereafter conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; or

l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or

m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit for which the company does not subsequently pay for; or

n) within twelve months next before the winding up or any time thereafter, under false pretence that the company is carrying on its business, obtains in credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on indictment to imprisonment for a term of five years, or on summary conviction to imprisonment for a term of twelve months, and in the case of any other offence he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction of imprisonment for a period of twelve months:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (m), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be liable to be punished in the same way as if he had committed an offence under such paragraph.

(3) For the purpose of this section the expression “officer” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

244. PENALTY FOR FALSIFICATION OF BOOKS

If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable on conviction on indictment to imprisonment for a period of five years.

245. FRAUDS BY OFFICERS OF COMPANIES WHICH HAVE GONE INTO LIQUIDATION

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up, -

(a) has by false pretence or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of twelve months.

246. PERSONS CONCERNED RESPONSIBLE FOR FRAUDULENT TRADING

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly
Parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liability of the company as the Court may direct.

On the hearing of an application under this subsection the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term of two years or to a fine of two thousand five hundred dollars, or to both.

(4) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made unless the person concerned pays the debts and liabilities which the Court in the declaration has directed that he should pay within a space of three weeks of the declaration he shall be deemed to have been guilty of an act of bankruptcy under section 3 of the Bankruptcy Act 1989.

247. POWER OF COURT TO ASSESS DAMAGES AGAINST DELINQUENT OFFICERS

(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Official Receiver, or of the liquidator, or of any creditor or contributory, examine the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) When an order is made under this section, if the person concerned fails to comply with the order within the space of three weeks of it being served upon him or within such time, or such further time that the Court may allow, unless he satisfies the Court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount he has been ordered to pay he shall be guilty of an act of bankruptcy for the purposes of section 3 of the Bankruptcy Act 1989.
248. PROSECUTION OF DELINQUENT OFFICERS AND MEMBERS OF COMPANY

(1) If it appears to the Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish him with such information as he shall require and give him such access to and facilities for inspecting and taking copies of any documents in his possession or control relating to the matter in question.

249. BODY CORPORATE DISQUALIFIED FOR APPOINTMENT AS LIQUIDATOR

A body corporate, unless empowered so to do by an incorporating Act, shall not be qualified for appointment as liquidator of a company whether in a winding up by the Court or in a voluntary winding up and -

   (a) any appointment made in contravention of this provision shall be void; and

   (b) any body corporate which acts in contravention of this section shall be liable to a fine not exceeding five hundred dollars.

250. CORRUPT INDUCEMENT AFFECTING APPOINTMENT AS LIQUIDATOR

(1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company’s liquidator shall be liable

   (a) on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and

   (b) on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both.

(2) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

251. ENFORCEMENT OF DUTY OF LIQUIDATOR TO MAKE RETURNS ETC.

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any provision imposing penalties on a liquidator in respect of any such default as aforesaid.

252. NOTIFICATION THAT A COMPANY IS IN LIQUIDATION

(1) Where a company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver
or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of one hundred dollars.

253. EXEMPTION OF CERTAIN DOCUMENTS FROM STAMP DUTY

(1) When a company is being wound up by the Court or when a company is the subject of a creditors’ voluntary winding up -

(a) every assurance relating solely to freehold property, or to any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, bond or other instrument or writing relating solely to the property of any company which is being wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In this section the expression “assurance” includes deed, conveyance, assignment and surrender.

254. BOOKS OF COMPANY TO BE EVIDENCE

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

254A. FORM OF BOOKS AND PAPERS OF COMPANY AND LIQUIDATORS

(1) For the purposes of sections 255 and 261, the books and papers of the company and books and papers of the liquidators may be kept in hard copy form or in electronic form and arranged in such manner as may be prescribed under subsection (8).

(2) Where such books and papers are kept otherwise than in hard copy form, reasonable precautions shall be taken for ensuring the proper maintenance and retention of the books and papers.

(3) Where such books and papers are kept by the company or by the liquidators, as the case may be, by recording the information in question in electronic form, they shall ensure that proper facilities shall be provided to enable such books and papers to be inspected as required.

(4) In the case where books and papers are kept in electronic form, the company or the liquidators as the case may be, shall provide for the manner by which the books and papers are to be authenticated or verified.

(5) Where default is made in complying with this section, the liquidator and every person who was a director or an officer of the company at the commencement of the winding up who is in default shall be liable to a default fine.

(6) With respect to the books and papers of the company which are in existence at the commencement of the winding up—

(a) the liquidator’s duties under this section relate only to the books and papers of the company that have been received by the liquidator; and
the liquidator is only required to verify that such books and papers which the liquidator has stored in electronic form are true and correct copies of the books and papers which the liquidator has received from the company.

(7) In this section—

“in electronic form” means in the form of an electronic record; and

“in hard copy form” means in a paper form or similar form capable of being read.

(8) The Minister may make regulations for the purposes of this section and, without prejudice to the generality of this subsection, the regulations may prescribe classes of books and papers that must be kept in hard copy form.

(9) Regulations made under subsection (8) shall be subject to the negative resolution procedure.

255. DISPOSAL OF BOOKS AND PAPERS OF COMPANY

(A1) When a company has been wound up and is about to be dissolved the liquidator, in relation to the company for which he has been appointed as the liquidator, shall—

(a) keep the records of account of the company referred to in section 83 which are in existence at the commencement of the winding up, and have been provided to the liquidator, for five years from the end of the period to which such records of account relate;

(aa) keep the beneficial ownership register referred to in section 98H which is in existence at the commencement of the winding up, and has been provided to the liquidator, for five years from the date of the dissolution of the company;

(b) keep the books and papers of the liquidator for five years from the date of the dissolution of the company;

(c) where applicable, keep the records specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 that are in existence at the commencement of the winding up in relation to the company, and have been provided to the liquidator, for the period specified in regulation 15.

(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is say -

(a) in the case of a winding up by the Court, in such way as the Court directs;

(b) in the case of a members’ voluntary winding up, in such way as the company by resolution directs, and, in the case of a creditors’ voluntary winding up, in such a way as the committee of inspection or, if there is no such committee, as the creditors of the company may direct, provided that no direction given under this section shall direct the disposal of such books and papers of the company or of the liquidators or of such records referred to in subsection (A1) unless, with respect to the books and papers of record, the applicable period specified in this Act for its retention has expired.

(2) No responsibility shall rest on the company, the liquidator or any person to whom the custody of the books and papers has been committed, by reason only of any book or paper not being forthcoming to any person claiming to be interested therein provided that the company, liquidator or person, as the case may be, retains custody of such books and papers -

(i) in the case of a company dissolved pursuant to Section 213, for a period of at least ten years;
(ii) in the case of a company dissolved pursuant to Section 261, for a period of at least twenty years; and

(iii) in any other case, for a period of at least five years,

commencing on the date of the dissolution of the company.

(3) The Minister may make rules for enabling the Registrar to prevent, for such period from the dissolution of the company, as the Registrar thinks proper, the destruction of the books and papers of a company which has been wound up, and of its liquidator, and for enabling any creditor or contributory of the company to make representations to the Registrar and to appeal to the Court from any direction which may be given by the Registrar in the matter, provided that such period shall not exceed:

(a) in the case of a company dissolved pursuant to Section 213, ten years;

(b) in the case of a company dissolved pursuant to Section 261, twenty years; and

(c) in any other case, five years,

commencing on the date of the dissolution of the company.

(4) If any person acts in contravention of any rules made for the purposes of this section or of any direction of the Registrar thereunder, he shall be liable to a fine of five hundred dollars.

(5) Any rules made under subsection (3) shall be subject to negative resolution procedure.

(6) A person who fails to comply with subsection (A) shall be liable to a default fine of five hundred dollars.

256. INFORMATION AS TO PENDING LIQUIDATIONS

(1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar such particulars as the Registrar may require with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a default fine.

(3) This section shall not apply in the case of a members’ voluntary winding up of a company.

257. UNCLAIMED ASSETS TO BE PAID INTO CONSOLIDATED FUND

(1) If, where a company is being wound up, it appears either from any statement sent to the Registrar under the last foregoing section or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the Accountant General who shall pay it into the Consolidated Fund and the liquidator shall be entitled to a receipt for the money so paid which shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into the Consolidated Fund in pursuance of this section may apply to the Accountant General for payment thereof, and the Accountant General, on receipt of a certificate by the liquidator that the person claiming is entitled, may make an order for the payment to that person of the sum due.

(3) Any person dissatisfied with the decision of the liquidator or the Accountant General in respect of a claim made under this section may appeal to the Court.
258. APPOINTMENT OF COMMISSIONER TO TAKE EVIDENCE

(1) The Court may appoint a commissioner for the purpose of taking evidence under this Act and may refer the whole or any part of the examination of any witnesses under this Act to any person it has appointed as commissioner.

(2) Every commissioner shall have in relation to any matter referred to him all the powers of the Court to summon and to examine witnesses, to require the delivery of documents, to punish defaults by witnesses, and to allow their costs and expenses to witnesses.

(3) Any examination so taken shall be returned or reported to the Court.

259. THE SWEARING OF AFFIDAVITS ETC.

(1) Any affidavit or declaration required to be sworn under or for the purposes of this Part may be sworn in Bermuda or elsewhere before any Court or person lawfully authorized to take and receive affidavits or before any of Her Majesty’s consuls, vice consuls or high commissioners.

(2) All courts, judges, justices, commissioners and persons acting judicially shall for the purposes of subsection (1) take judicial notice of the seal or stamp or signature of any court, judge or person in Bermuda and of any court, consul, vice consul or high commissioner elsewhere but may in its discretion require the seal or stamp of any other person to be authenticated by a court, consul, vice consul or high commissioner or require evidence that the person is lawfully authorized to seal and receive affidavits.

260. POWER OF COURT TO DECLARE DISSOLUTION OF COMPANY VOID

(1) Where a company has been dissolved the Court may-

(a) in the case of a dissolution pursuant to section 213, at any time not later than ten years from the date of such dissolution; and

(b) in any other case, at any time not later than five years from such date,

on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do he shall be liable to a default fine.

(2A) Where an order is made and registered pursuant to this section, the company shall be deemed to have continued in existence as if it had not been dissolved.

(3) Where the Court makes an order under subsection (1), the Court may make such consequential orders, or impose such terms and conditions, as to the Court may seem appropriate in the circumstances.

261. REGISTRAR MAY STRIKE DEFUNCT COMPANY OFF REGISTER

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in an appointed newspaper with a view to striking the name of the company off the register.
(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in an appointed newspaper, and send to the company, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in an appointed newspaper and send to the company or the liquidator if any, a like notice as is provided in the last foregoing subsection.

(5) At the expiration of the time mentioned in subsection (3) the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in an appointed newspaper, and on such publication the company shall be dissolved:

Provided that -

(a) the liability, if any, of every officer, manager and member of the company shall continue and may be enforced as if the company had not been dissolved;

(aa) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (5A) to keep such records for the period referred to in that subsection; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5A) Every person who was a director or an officer of a company at the date upon which the company is struck off the register pursuant to this section shall ensure that—

(a) the records of account of the company referred to in section 83 that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and

(aa) the beneficial ownership register of the company referred to in section 98H that is in existence on that date is kept for a minimum of five years from the date on which the company is struck off the register;

(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

(5B) A person who fails to comply with subsection (5A) shall be liable to a default fine of five hundred dollars.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of twenty years from the publication of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seems just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.
(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

261A Striking off an application by a company

(1) The Registrar may, on the application of a company, strike the company’s name off of the register on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) shall be made on the company’s behalf by all of its directors or by a majority of them

(3) Upon the receipt of the application, the Registrar shall, if satisfied that the grounds and conditions referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries, and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and manner referred to in section 261C is not received within thirty calendar days after the date thereof a notice, details of which are set out in subsection (4), will be published in the Official Gazette with a view to striking the name of the company off of the register.

(4) The Registrar may not strike a company’s name off of the register under this section until after the expiration of sixty days after the publication by the Registrar in the Official Gazette of a notice—
   (a) stating that the Registrar intends to exercise the power under this section in relation to the company; and
   (b) inviting any person to show cause as to why that should not be done within thirty calendar days after the date of the initial notice referenced in subsection (3).

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the company should not be struck off the register, the Registrar shall strike the name of the company off the register and publish a notice in the Official Gazette of the company’s name having been struck off.

(6) On the publication of the notice in the Official Gazette under subsection (5), the company is dissolved, provided that—
   (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved;
   (b) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (7) to keep such records for the period referred to in that subsection; and
   (c) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off of the register.

(7) Every person who was a director or an officer of a company at the date upon which the company is struck off of the register pursuant to this section shall ensure that—
   (a) the records of account of the company referred to in section 83 that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and
(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

(8) A person who fails to comply with subsection (7) shall be liable to a default fine of five hundred dollars.

(9) The Registrar shall ensure that such particulars of the company and of the application referred to in subsection (1), as he may determine, are sent to
   (a) the Office of the Tax Commissioner;
   (b) the Department of Social Insurance; and
   (c) the Bermuda Monetary Authority, provided that such company is an entity regulated by the Bermuda Monetary Authority.

(10) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other agreed upon manner.

261B Withdrawal of application

(1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a company’s name off of the register under section 261A at any time before the name of the company has been struck off of the register.

(2) Upon receipt of the notice referred to in subsection (1), the Registrar shall send to the company by ordinary post a notice that the application to strike the company’s name off of the register has been withdrawn.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar may publish a notice on the Registrar’s website that the application to strike the company’s name off of the register has been withdrawn.

261C Objections to strikeoff

(1) Where a notice is published by the Registrar under section 261A(4) of the Registrar’s intention to strike the company’s name off of the register, any person may deliver, not later than the date specified in section 261A(4)(b), in objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 261A(1).

(2) Upon receipt of a notice of objection, within the time referred to in subsection (1), the Register shall—
   (a) where applicable, give the applicant or applicants for striking the name of the company off of the register notice of the objection; and
   (b) in deciding whether to allow the objection, take into account such considerations as may be prescribed.

262. PROPERTY OF DISSOLVED COMPANY TO BE BONA VACANTIA

Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, including leasehold property but not including property held by the company on trust for any other person, shall, subject and without prejudice to any order which may at any time be made by the Court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown.
263. **POWER OF CROWN TO DISCLAIM TITLE TO PROPERTY VESTING UNDER FOREGOING SECTION**

(1) Where any property vests in the Crown under the last preceding section, the Crown’s title thereto under that section may be disclaimed by a notice signed by the Attorney General.

(2) When a notice of disclaimer is executed under this section as respects any property, that property shall be deemed not to have been vested in the Crown under the last preceding section and section 240 shall apply to the property as if it had been disclaimed under subsection (1) of that section.

264. **INVESTMENT OF SURPLUS FUNDS**

(1) When the cash balance standing to the credit of the account of any company in liquidation is in excess of the amount which, in the opinion of the liquidator is required for the time being to answer demands in respect of the company’s debts, the liquidator may invest the amount not so required in investments that the committee of inspection authorises, or in the absence of a committee of inspection that the Court authorises.\(^{1048}\)

(2) In the case of a winding up by the Court the liquidator shall not make any investment under subsection (1) without the sanction of the Court; in the case of a members’ or creditors’ voluntary winding up the liquidator shall not act without the sanction of the committee of inspection or when there is no committee of inspection without the sanction of a general meeting of members or a meeting of creditors, as the case may be.

265. **DISQUALIFICATION OF UNDISCHARGED BANKRUPT FROM ACTING AS RECEIVER OR MANAGER**

(1) If any person being an undischarged bankrupt under the laws of any country acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars or both.

(2) The foregoing subsection shall not apply to a receiver or manager where -

(a) the appointment under which he acts and the bankruptcy were both before the commencement of this Act; or

(b) he acts under an appointment made by order of a court.

266. **RECEIVERS AND MANAGERS APPOINTED OUT OF COURT**

(1) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions and on any such application the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as the Court thinks just.

(2) A receiver or manager of the property of a company appointed under the powers contained in any instrument shall, to the same extent as if he had been appointed by order of a Court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection,
or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(3) This section shall apply whether the receiver or manager was appointed before or after the commencement of this Act but subsection (2) thereof shall not apply to contracts entered into before the appointed day.

267. NOTIFICATION THAT RECEIVER OR MANAGER APPOINTED

(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine of one hundred dollars.

268. POWER OF COURT TO FIX REMUNERATION ON APPLICATION OF LIQUIDATOR

The Court may, on an application made to the Court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

269. PROVISIONS AS TO INFORMATION WHERE RECEIVER OR MANAGER APPOINTED

(1) Where a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in the next following section referred to as “the receiver”) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this and the next following section

(a) the receiver shall forthwith send to the company notice of his appointment; and

(b) the company shall, within fourteen days after receipt of the notice, or such longer time as may be allowed by the Court or the receiver, submit to the receiver a statement showing as at the date of the receiver’s appointment particulars of the company’s assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively and such further information as the receiver shall require and the company is able to give.

(2) The receiver may require any statement or part of a statement submitted under subsection 1(b) to be verified by an affidavit from an officer of the company.

(3) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a default fine.

270. DELIVERY TO REGISTRAR OF ACCOUNTS OF RECEIVERS AND MANAGERS

(1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding
abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Any receiver or manager who makes default in complying with the provisions of this section shall be liable to a default fine.

271. ENFORCEMENT OF DUTY OF RECEIVER TO MAKE RETURNS

(1) If -

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) any receiver of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him, the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) An application for the purposes of this section may be made by any member or creditor of the company or by the Registrar or in the case of a default under subsection 1(b) by the liquidator and the order may provide that all costs of and incidental to the application shall be borne by the receiver.

272. CONSTRUCTION OF REFERENCES TO RECEIVERS AND MANAGERS

It is hereby declared that, except where the context otherwise requires -

(a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or, as the case may be, to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment are implied in and have effect as if contained in an instrument.

PART XIVA 1049 - TRANSFER OF SECURITIES

272A. TRANSFER OF SECURITIES

[REPEALED] 1050 1051 1052 1053 1054 1055

PART XIVB 1056 - POWERS TO ASSIST FOREIGN REGULATORY AUTHORITIES

272B. REQUEST FOR ASSISTANCE BY FOREIGN REGULATORY AUTHORITY

[REPEALED]

272C. POWER TO REQUIRE INFORMATION OR DOCUMENTS

[REPEALED]
COMPANIES ACT 1981

272D. EXERCISE OF POWERS BY MINISTER
[REPEALED]

272E. PENALTY FOR FAILURE TO COMPLY WITH REQUIREMENT
[REPEALED]

PART XIVC - FINTECH ADVISORY COMMITTEE

272F FinTech Advisory Committee

(1) The Minister shall appoint a committee to be known as the FinTech Advisory Committee whose primary function shall be to advise the Minister on any matter relating to FinTech, or the development of the FinTech industry, which the Minister may refer to it.

(2) The FinTech Advisory Committee may advise the Minister on any matter relating to the development and promotion of the FinTech industry in Bermuda.

(3) The FinTech Advisory Committee shall consist of such persons (not fewer than five in number) to be appointed by the Minister, in consultation with the Minister responsible for e-commerce, as the Minister may think fit.

(4) Not fewer than three members of the FinTech Advisory Committee shall be persons appearing to the Minister to be senior industry professionals who are knowledgeable about FinTech business, blockchain and distributed ledger technology.

(5) The Minister may make such regulations as he considers appropriate or expedient in relation to the FinTech Advisory Committee.

PART XV - GENERAL

273. FORM OF REGISTERS ETC

(1) Any book or paper required by this or any other Act, whether public or private, to be kept by the Registrar or a company may be kept by recording the matters in question in bound books or in any other permanent manner including a form otherwise than legible.

(2) Where any such book or paper is not kept in a bound book adequate precautions shall be taken for guarding against falsification and facilitating its discovery and where the book or paper is kept in a form otherwise than legible it shall be capable of being reproduced in a legible form.

(3) Where in this or any other Act, whether public or private, provision is made for the inspection or reproduction of any book or paper then it shall be treated as a provision to allow inspection or reproduction in a legible form or of being accessed in the manner provided in section 2A(3).

(4) Copies of minutes referred to in section 81 and financial statements referred to in section 84 and any summarised financial statements referred to in section 87A shall be preserved in the registered office of the company for a period of six years from the date when they were first required.

(5) Where any company fails to comply with any provision of this section the company and any officer responsible for the default shall be liable to a fine of one thousand dollars.
274. CERTAIN OFFICERS TO BE EXEMPT FROM COMPANY FEES AND CHARGES

The Accountant General, the Registrar, the Official Receiver and any person acting on their behalf shall be exempt from the payment of any fee or charges for inspecting or copying the register or any books or papers of a company when lawfully entitled so to do.

275. PENALTY FOR IMPROPER USE OF WORD “LIMITED”

If any person or persons trade or carry on business under any name or title of which “Limited” or any contraction or imitation of such word is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a default fine.

276. PRODUCTION AND INSPECTION OF BOOKS WHEN OFFENCE SUSPECTED

(1) Without prejudice to any other provision of law, where, on an application to the Minister by or on behalf of the Director of Public Prosecutions, it appears to the Minister that an offence under this Act may have been committed, and that evidence relating to the commission of such offence may be found in any books or papers of or under the control of the company, a direction in writing may be made by the Minister requiring the secretary to the company or such other officer or person as may be named in the direction to produce the said books or papers or any of them to a person named in the direction at a place and time so named.

(2) When a direction has been made under subsection (1), the person named in the direction to whom the said books or papers are to be produced, shall inspect and may take copies thereof for the purpose of investigating and obtaining evidence of any offence under this Act.

(3) A person to whom books and papers are produced pursuant to subsection (1) shall on completion of his investigation forward a report of the results thereof to the Director of Public Prosecutions together with all copies of documents made by him pursuant to subsection (2).

(4) Any person who fails to comply with a direction of the Minister made under subsection (1) is guilty of a summary offence and is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) A certificate purporting to be signed by the Minister certifying that a person has failed to comply with a direction made by him under subsection (1) shall, in any prosecution for an offence under subsection (3) be prima facie proof of such failure to comply.

(6) For the purpose of this section “company” shall include an overseas company.

276A. APPEALS TO THE COURT

(1) An appeal shall lie to the Court against an order of the Minister revoking a license under section 114B or section 129A.

(2) An appeal under this section shall lie at the instance of the company affected thereby and shall be commenced by notice in writing served upon the Attorney-General within twenty-one days after the day on which the revocation made under section 114B or section 129A takes affect.

(3) Subject to subsection (2), the Chief Justice may make rules of court under section 62 of the Supreme Court Act 1905 for the purpose of regulating the practice and procedure on appeals under this section.

(4) On an appeal under this section, the Court may confirm, reverse, or modify the decision of the Minister or remit the matter to him with the opinion of the Court thereon.

(5) Unless the Court otherwise orders, an appeal under this section shall not have the effect of suspending the execution of the decision appealed against, pending the determination of the appeal.
276B. **ONUS OF PROOF**

In any proceedings under this Act in which the right of any company to carry on business in Bermuda is in issue, the onus of proving that the company had, at the relevant time, the right to carry on business in Bermuda, shall be on that company unless, at the relevant time, that company was licensed under this Act.

276C. **PROOF OF CERTIFICATE**

A certificate purporting to be under the hand of the Minister specifying that any particular company was or was not licensed under this Act during any period specified in the certificate shall be receivable in evidence in any proceedings under this Act without further proof and shall be prima facie evidence of the facts specified therein.

276D. **PUBLICATION OF ORDERS**

Every revocation of the license of a company made under section 114B or section 129A shall be published in the Gazette and shall take effect from the date of such publication or such later date as may be specified therein.

277. **PENALTY FOR FALSE STATEMENTS OR FAILURE TO MAKE A STATEMENT**

(1) If any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of twelve months or to a fine of two thousand dollars or to both such fine and imprisonment.

(2) Any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act fails to make a statement he is required to make in such return, report, certificate, book or paper or other document and any person who wilfully fails to make a return, report or document which he is required to make shall be liable to a fine of one thousand dollars.

278. **SECTION 81 OF THE CRIMINAL JURISDICTION AND PROCEDURE ACT 2015 NOT TO APPLY**

Section 81 of the Criminal Jurisdiction and Procedure Act 2015 shall not apply to offences against the provisions of this Act:

Provided that no prosecution for a summary offence shall be begun more than three years after the offence was committed.

279. **APPLICATION OF FINES**

A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings.

280. **DEFAULT FINES**

(1) Where in this Act it is provided that any person who is in default shall be liable to a default fine, such person shall, for every day during which the default, refusal or contravention continues, be liable to a fine of twenty dollars.

(2) Notwithstanding subsection (1) an individual who is in default shall only be liable to a fine if he knowingly is guilty of the default or knowingly and wilfully authorizes or permits the default.
(3) It shall be lawful for the Registrar, in any case where a person fails to comply with a provision of this Act which is subject to a default fine and the failure is not due to wilful neglect or default, to accept payment of a penalty of two hundred and fifty dollars, and in such case subsection (1) shall not apply.

(4) Any penalty payable under this Act may be recovered by the Accountant General in the Supreme Court or in a court of summary jurisdiction as a civil debt.

281. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES

(1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, whether he is or is not an officer of the company, it appears to the Court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

282. SUITS AND ACTIONS AGAINST REGISTRAR AND OFFICIAL RECEIVER

(1) No suit or action shall lie against the Registrar or the Official Receiver or any person acting on their behalf in respect of anything done or omitted to be done in their official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under Part XIII.

283. REGISTER AND OFFICIAL RECEIVER TO BE INDEMNIFIED IN RESPECT OF FOREIGN SUITS

Neither the Registrar nor the Official Receiver shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against him by deed guarantee or deposit, as he may require.

284. MODE OF MAKING APPLICATIONS TO COURT

(1) Subject to any other provision of the law including the Rules of the Supreme Court 1952 any application under this Act shall be made by originating summons.

(2) An originating summons may in the first place be heard ex parte when the Court may direct that the summons shall be served on such persons, if any, as it shall think fit and that the summons shall be supported by such evidence as it shall require.
285. **POWER TO ENFORCE ORDERS**

Orders made by any Court under this Act may be enforced as orders made in an action pending therein.

286. **AMENDMENT OF PRIVATE ACTS**

(1) Subject to subsections (3), (4) and the other provisions of this Act which enable private Acts incorporating companies to be amended a company to which this Act applies may amend any provision of its incorporating Act by resolution passed at a general meeting of members of which due notice has been given:

Provided that before notice of the meeting is given to the members the Minister has consented to the amendment.

(2) Subject to subsections (3) and (4) the provisions of section 12, other than subsection (1) thereof, shall apply to a company wishing to amend a provision of its incorporating Act as if it were altering its memorandum and in the application of such provisions the words “private Act” shall be substituted for the word “memorandum”.

(3) No amendment shall be made to any private Act which amends the provisions of any public Act including this Act or amends any provision of law referred to in paragraphs (a) to (e) of the proviso to subsection (2) of section 35 of the Constitution.

(4) The change of name of a company incorporated by private Act shall be made in accordance with section 10.

287. **REPEAL OF, AND AMENDMENTS TO, OTHER ACTS, AND SAVINGS, SEVENTH SCHEDULE**

(1) The enactments specified in Part I of the Seventh Schedule are repealed, and the enactments specified in Part II of that Schedule are amended in the respects specified in that Part of that Schedule.

(2) Nothing in this Act shall affect any appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any enactment repealed or amended by subsection (1) (in this Act referred to as a “former enactment relating to companies”), but any such appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force immediately before the appointed day, continue in force and, so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if made, passed, given, taken, issued or done under this Act.

(2A) Where immediately before the appointed day -

(a) a permit under section 9 of the Companies (Incorporation by Registration) Act 1970 had not either been granted or refused by the Minister in response to an application made to him under the Act before that day for the incorporation of a company;

or

(b) Such a permit had in fact been granted by the Minister but a certificate of incorporation had not been issued in respect of the company under that Act,

the repeals and amendments effected by subsection (1) of this section shall be deemed not to have had effect in relation to such an application but the enactments repealed or, as the case may be, amended by that subsection shall be deemed to continue in full force and effect on and after that day to such extent as to enable the Minister, if he thinks fit, to grant the permit, and the Registrar to issue the certificate of incorporation, under the Companies (Incorporation by Registration) Act 1970; and where a certificate of
incorporation is issued in respect of a company on or after the appointed day by virtue of this subsection, the company shall be deemed to be a company registered before the appointed day for the purposes of paragraph (a) of subsection (1) of section 4.

(2B) Where before the appointed day a company had made proposals to the Minister under section 19 of the Companies (Incorporation by Registration) Act 1970 for the alteration of its memorandum of association and immediately before that day the Minister had not either approved or rejected the proposals, the repeals and amendments effected by subsection (1) of this section shall be deemed not to have had effect in relation to those proposals, but the enactments repealed or, as the case may be, amended by the said subsection (1) shall be deemed to continue in full force and effect on and after that day to such extent as to enable the Minister, if he thinks fit, to approve the proposals, and the Registrar to register the altered memorandum, under the Companies (Incorporation by Registration) Act 1970; and where an altered memorandum is so registered on or after the appointed day by virtue of this subsection, the alteration to the memorandum shall be deemed for the purposes of this Act to have been effected before the appointed day.

(3) Any legal proceeding, winding up or inspection taking place on the appointed day shall continue as if this Act had not been enacted unless the Court orders that this Act shall apply to the proceeding, winding up or inspection.

(4) Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

(5) Any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Act.

(5A) Any person holding the office of Registrar of Companies immediately before the appointed day shall be deemed as from the appointed day to have been duly appointed Registrar of Companies and Official Receiver under section 3.

(5B) Any person holding the office of Registrar of Companies on or after the commencement of the Companies (Winding Up) Act 1977 and before the appointed day shall be deemed to have been the Official Receiver in relation to any function performed by him in that name in purported pursuance of any power conferred by that Act upon the Registrar of Companies in Bermuda to perform the functions of the Official Receiver in England, anything to the contrary notwithstanding.

(6) Any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Act.

(7) All funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(7A) Where immediately before the appointed day an exempted company incorporated by registration under any former enactment relating to companies specified its objects or powers by reference to all or any paragraphs of the First Schedule to the Companies (Incorporation by Registration) Act 1970 (now repealed) such company shall after the appointed day continue to have the objects or powers so specified by reference and shall be capable of exercising such objects or powers whether or not stated as such, anything to the contrary notwithstanding.

(7B) Where immediately before the appointed day a company in its incorporating Act specified its objects or powers by reference to all or any paragraphs of the Schedule to the Companies (Incorporation by Registration) Act 1950 (now repealed) or the First Schedule to the Companies (Incorporation by Registration) Act 1970 (now repealed), such company shall after the appointed day continue to have and shall be deemed always to have had the objects or powers, as the case may be, so specified by reference and further shall be deemed to be and always
to have been capable of exercising such objects or powers, whether or not stated as such, anything to the contrary notwithstanding.

(7C) Notwithstanding the repeal of any enactment by this Act, any license granted under any enactment so repealed to an exempted company enabling such company to carry on business in or from within Bermuda shall, if valid immediately before the appointed day, continue in full force and effect according to its tenor as if it were a license granted under section 129A.

(7D) Notwithstanding the repeal of any enactment by this Act, any license granted under any enactment so repealed to a local company or an hotel company enabling such company to carry on business in Bermuda shall, if valid immediately before the appointed day, continue in full force and effect according to its tenor as if it were a license granted under section 114B.

(8) Where any offence, being an offence for the continuance of which a penalty was proved, has been committed under any former enactment relating to companies, proceedings may be taken under this Act in respect of the continuance of the offence after the appointed day, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(9) Save where otherwise provided in this Act nothing in this section shall affect the provisions of the Interpretation Act 1951 relating to the repeal, re-enactment or amendment of Acts.

287A Regulations

(1) The Minister may make such regulations as are expedient to give effect to the provisions of this Act.

(2) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

(3) Regulations may be made by the Minister of Finance under the Government Fees Act 1965 or the Stamp Duties Act 1976 to fix fees for any function performed under this Act, unless such fees are otherwise prescribed.

288. RULES

(1) The power of the Chief Justice to make rules of Court under section 62 of the Supreme Court Act 1905, shall include a like power in relation to all Court proceedings under this Act including any matters to be prescribed in relation to the winding up of a company by the Court, including matters relating to the retention of records in electronic form, and the fees to be paid in respect of Court proceedings.

(2) The Minister may by rule prescribe any matter to be prescribed under this Act in respect of which the Chief Justice is not entitled to make rules and may make rules prescribing the manner and form in which any application or declaration under this Act may be made and may by regulations under the Government Fees Act 1965 or the Stamp Duties Act 1976 whichever is appropriate fix fees for any function performed under this Act unless otherwise prescribed.

(3) All rules made by the Chief Justice, other than rules prescribing fees shall not be subject to section 6 of the Statutory Instruments Act 1977.

(4) All rules by whomsoever made under this Act prescribing fees shall be subject to affirmative resolution procedure.

(5) All rules unless otherwise expressly provided and those referred to in subsections (3) and (4) shall be subject to negative resolution procedure.

289. Saving

(1) Nothing in this Act shall affect the provisions of section 61 of the Bermuda Housing Act 1980.
(2) Nothing in Part VIA shall be construed as requiring a company to establish a new and additional beneficial ownership register pursuant to section 98H, if the minimum required information is already being kept with respect to the company in a register under, or pursuant to, any other applicable statutory provision.

(3) Nothing in Part VIA shall be construed as requiring a company to file information relating to beneficial ownership pursuant to section 98L, if the minimum required information with respect to the beneficial owners of the company is being, or has already been, filed under, or pursuant to, any other applicable statutory provision.

(4) Nothing in this Part shall be construed as affecting requirements relating to the provision of information (including information relating to beneficial ownership) by a company to the Bermuda Monetary Authority at the time of its application for registration or continuation in Bermuda.

(5) For the avoidance of doubt, the company shall otherwise comply with the provisions of Part VIA with respect to its beneficial ownership register.

(6) Nothing in Part IIIA shall be construed as affecting any requirements under any statutory provision relating to securities or foreign exchange or any other applicable law.

(7) Part IIIA does not affect any liability that a person has under any other law.

FIRST SCHEDULE - (SECTION 11(L)) [REPEALED]

SECOND SCHEDULE - (SECTION 11(2)) - [REPEALED]

THIRD SCHEDULE - (SECTION 114)

PART I

PROVISIONS TO BE COMPLIED WITH BY A LOCAL COMPANY CARRYING ON BUSINESS IN BERMUDA

1. (1) The company shall be controlled by Bermudians.

   (2) Without prejudice to the generality of sub-paragraph (1), at least sixty per centum of the total voting rights in the company shall be exercisable by Bermudians.

2. (1) The percentage of Bermudian directors, and the percentage of shares beneficially owned by Bermudians, in the company shall not be less than sixty per centum in each case:

Provided that the company shall not be deemed to be in breach of this paragraph in so far as, and so long as, it is acting in accordance with sub-paragraph (2).

   (2) The company shall act in accordance with this subparagraph if the percentage of shares beneficially owned by Bermudians in it falls below sixty per centum by virtue of factors which are beyond its control and it gives notice in writing to the person who is not Bermudian and whose ownership of shares results in the percentage so falling, as soon as the directors become aware of that fact, that -
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(a) he must divest himself of his interest in those shares as soon as may be and, in any event, not later than three years from the date upon which he receives the notice; and

(b) he must not exercise any voting rights attaching to such shares from the date upon which he receives the notice,

and the three years calculated in accordance with paragraph (a) have not elapsed:

Provided that the Minister may in any particular case, for good cause, extend the period of three years for a further period not exceeding one year.

(3) For the purposes of sub-paragraph (2), the directors of a company shall be deemed to become aware that the percentage of shares beneficially owned by Bermudians in their company is less than the percentage specified in sub-paragraph (1) three days after the day upon which any director of a company would, if acting with due diligence, have become aware of that fact.

PART II

COMPANIES NOT REQUIRED TO COMPLY WITH PART I

The Shell Company of Bermuda Limited within the scope of any enactment authorizing the carrying on of its business operation in Bermuda.

[NO FOURTH SCHEDULE] - [SEE EIGHTH SCHEDULE]
1. The appropriate fee in the case of a company whose business includes the management of any unit trust fund, shall be $3,050 in respect of each unit trust fund managed by that company at the date of the declaration made under section 121.

2. When the issued capital of a company if a company limited by shares, or other company having a share capital, is—

<table>
<thead>
<tr>
<th>Issued capital</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) less than $50,000</td>
<td>$685</td>
</tr>
<tr>
<td>(ii) $50,000 or more but less than $250,000</td>
<td>$1,020</td>
</tr>
<tr>
<td>(iii) $250,000 or more but less than $500,000</td>
<td>$1,700</td>
</tr>
<tr>
<td>(iv) $500,000 or more but less than $1,000,000</td>
<td>$3,385</td>
</tr>
<tr>
<td>(v) $1,000,000 or more but less than $5,000,000</td>
<td>$6,765</td>
</tr>
<tr>
<td>(vi) $5,000,000 or more but less than $10,000,000</td>
<td>$12,890</td>
</tr>
<tr>
<td>(vii) $10,000,000 or more</td>
<td>$19,330</td>
</tr>
</tbody>
</table>

In the case of a local company which is a mutual company, the tax payable by such company shall be on the same scale as a company limited by shares but the basis shall be the reserve fund of such a company in place of that issued capital.

In the case of a local company which is a company limited by guarantee, other than a mutual company no fee shall be payable.

In the case of a local company engaging in or carrying on wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas the tax payable by such company shall be $19,330.

**PART II (SECTION 131, 135)**

1. **A EXEMPTED COMPANIES (SECTION 131)**

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the assessable capital of the exempted company —</td>
<td></td>
</tr>
<tr>
<td>(i) is $0-$12,000</td>
<td>$2,095</td>
</tr>
<tr>
<td>(ii) is $12,001-$120,000</td>
<td>$4,275</td>
</tr>
</tbody>
</table>
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| (iii) is $120,001-$1,200,000 | $6,590 |
| (iv) is $1,200,001-$12,000,000 | $8,780 |
| (v) is $12,000,001-$100,000,000 | $10,980 |
| (vi) is $100,000,001-$500,000,000 | $19,605 |
| (vii) is $500,000,001 or more | $32,676 |

**B PERMIT COMPANIES (SECTION 135)**

| (b) Where the exempted company’s business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 131(1) was made | $3,050 |

| (bb) Where the exempted company: |
| (i) Where the exempted company is a small foreign sales corporation which does not lease aircraft | $615 |
| (ii) Where the exempted company is a regular foreign sales corporation which does not lease aircraft | $1,240 |
| (iii) Where the exempted company is a foreign sales corporation, whether small or regular, which leases aircraft | $2,079 |

<p>| (c) Where the exempted company: |
| (i) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is $15,000 or less | $2,095 |
| (ii) Where the exempted company is one limited by guarantee (but is not a mutual company) | $2,095 |
| (iii) Where the exempted company is the parent company of a wholly owned exempted company that carries on insurance business as defined in the Insurance Act 1978 | $2,095 |
| (iv) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is $150,000 or less | $4,335 |
| (v) Where the exempted company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas | $20,300 |</p>
<table>
<thead>
<tr>
<th>Conditions</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Where the permit company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas</td>
<td>$20,300</td>
</tr>
<tr>
<td>(b) Where the principal business of the permit company is finance business or insurance business or, in the case of a permit company which is open-ended, mutual fund business</td>
<td>$4,335</td>
</tr>
<tr>
<td>(c) Where the permit company’s business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 135 (as read with section 131) was made</td>
<td>$3,050</td>
</tr>
<tr>
<td>(d) In a case not falling with paragraphs (a) to (c)</td>
<td></td>
</tr>
<tr>
<td>(i) where the permit company has a physical presence in Bermuda; or</td>
<td>$2,095</td>
</tr>
<tr>
<td>(ii) where the permit company does not have a physical presence in Bermuda, but where its principal business falls within one of the specified categories</td>
<td>$2,095</td>
</tr>
<tr>
<td>(e) In any other case</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

For the above purposes, the following expressions have the following meanings—

“finance business” means the business of raising money from the public by the issue of bonds or other securities;

“foreign sales corporation” means a company which—

(a) has been registered under this Act as an exempted company; and

(b) has been designated as a foreign sales corporation under the Internal Revenue Code, of the United States of America, and has submitted to the Registrar a certified copy of the document which—

(i) evidences such designation; and

(ii) specifies whether the company is a small or regular foreign sales corporation;

“insurance business” means the business of effecting or carrying out contracts of insurance or reinsurance as principal, but excluding insurance management or insurance brokerage business;
“mutual fund business” means the business of raising money from the public for investment in real property, shares, stocks or personal property;

“open-ended company” means a company which has power under the terms of its incorporation to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder;

“physical presence” means that the permit company operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner;

“regular foreign sales corporation” means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated.

“small foreign sales corporation” means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated;

“specified category ” means—

(a) the ownership, commercial management or operation of ships or aircraft;

(b) pharmaceutical operations;

(c) research and development in bio-science or biomedicine; or

(d) a charitable purpose, within the meaning of the Charities Act 2014, which would enable the permit company to be registered as a charity under that Act if it were established as such in Bermuda;

“unit trust fund” means a fund under which the property is held on trust for the participants.

Where a company liable to pay the higher fee in any year does not carry on the business attracting the higher fee, it shall only pay the lower. Where a company liable to pay the higher fee at any time during a year carries on the business attracting the higher fee, it shall pay that fee for that year.

### C Segregated Accounts Companies

In addition to the annual fee or tax otherwise payable under this Schedule a segregated accounts company registered under section 6 of the Segregated Accounts Companies Act 2000 shall pay an annual fee of $295 in respect of each segregated account operated by the company, subject to a
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maximum annual fee of $1,180 in the aggregate.

SIXTH SCHEDULE\textsuperscript{1106} - [REPEALED]

SEVENTH SCHEDULE - (SECTION 287 (1)) - [OMITTED]

EIGHTH SCHEDULE - (SECTION 66(2))

Fees for Provision of Copies and Entries in Registers\textsuperscript{1107}

The fee prescribed for the purposes of section 66(2) and section 92A(3) of the Act is as follows:

(a) for the first one hundred entries or part thereof copied $  5.00
(b) for the next one thousand entries or part thereof copied $20.00
(c) for every subsequent one thousand entries or part thereof copied $20.00

NINTH SCHEDULE\textsuperscript{1108} (SECTION 4A) - RESTRICTED BUSINESS ACTIVITIES

1. Restricted business activities are –

   (a) operating a financial institution within the meaning of section 1(1) of the Bermuda Monetary Authority Act 1969 other than institutions that are investment funds or persons registered under section 4 or 10 of the Insurance Act 1978;\textsuperscript{1109} \textsuperscript{1110}

   (aa) Initial Coin Offerings; or\textsuperscript{1111}

   (b) providing by way of business any of the following services to the general public—

   offering of professional services as a barrister and attorney, medical practitioner, architect, dental practitioner, public accountant, optometrist, optician, professional surveyor, nurse, health service provider or any profession or occupation specified under the First Schedule to the Professions Supplementary to Medicine Act 1973;\textsuperscript{1112} \textsuperscript{1113} \textsuperscript{1114}

   (c) acquiring land or holding land other than in the case of land acquired or held under sections 120 and 129.\textsuperscript{1115}

TENTH SCHEDULE\textsuperscript{1116} (SECTION 4B) - PROHIBITED BUSINESS ACTIVITIES

The following are prohibited business activities-

(a) trafficking in armaments as defined in the Armaments (Control) Act 1964;

(b) except as authorized by law, operating lotteries as defined in the Lotteries Act 1944 or gambling facilities, including the operation thereof through the Internet;

(c) except as authorized by law, importation, exportation trading in, manufacture, production or supply of controlled drugs as defined by the “Misuse of Drugs Act 1972”.

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ELEVENTH SCHEDULE - (SECTION 120(1A)) - REPEALED SECTION 120(1) SAVING PROVISIONS

1. Saving provisions

Notwithstanding the repeal of section 120(1), which provided for a local company to acquire and hold in its corporate name any land in Bermuda with the previous sanction of the Minister, the following savings shall apply to the land acquired and held under that subsection—

(a) all rights vested in or in any manner held on behalf of a local company over land acquired under that subsection immediately before the commencement of this paragraph shall continue to be vested in such local company or held on behalf of such company (as the case may be);

(b) all liabilities and obligations subsisting against the local company with respect to the land acquired under that subsection immediately before the commencement of this paragraph shall continue to subsist against such local company;

(c) every contract in respect to the land acquired under that subsection, being a contract between the local company and any other party immediately before the commencement of this paragraph shall thereafter continue to subsist between the local company and such other party;

(d) all rights, powers and duties, whether arising under any written law or otherwise, with respect to the land acquired under that subsection, which immediately before the commencement of this paragraph were vested in or applied to the local company shall, by virtue of this paragraph, continue to be vested in, imposed on, or be enforceable by or against the local company.

2. Retroactive sanctions

Notwithstanding the repeal of section 120(1), the Minister may, where he considers it appropriate to so do, sanction retroactively the holding of land by a local company that is holding land, before the commencement of this paragraph, contrary to the provisions of the repealed section 120(1), only in the case where—

(a) all statutory requirements for the holding of the land, other than the repealed section 120(1) of the Act, have been complied with by the local company;

(b) the intention of the Minister to sanction retroactively the holding of the land by the local company is advertised in an appointed newspaper once each week for four consecutive weeks;

(c) no person registers any claim with the Minister with respect to that land during a period of 90 days from the date the advertisement is first published;

(d) a claim registered under subparagraph (c) is proved not to affect the local company’s right to the title to the land for the period of time to be retroactively sanctioned.
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The Minister responsible for companies, in exercise of the power conferred by section 34M and section 287A of the Companies Act 1981, makes the following Regulations:

**PART 1 - PRELIMINARY**

1. **Citation**

These Regulations may be cited as the Companies (Initial Coin Offering) Regulations 2018.

2. **Interpretation**

In these Regulations—

“Act” means the Companies Act 1981;

“AML/ATF regulated financial institution” has the meaning given in regulation 2(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

“applicant” means the company that submits an application for consent;

“application for consent” means an application to the Minister under section 4A of the Act for consent to an ICO;

“appropriate measures” has the meaning given in regulation 9;

“independent professional” means a professional legal adviser or accountant being a firm or sole practitioner in independent practice who by way of business provides legal or accountancy services to other persons;

“Initial Coin Offering” or “ICO” has the meaning given in section 34A of the Act;

“participant” means a person who purchases or otherwise acquires digital assets pursuant to the Initial Coin Offering;

“project” has the meaning given in section 34A of the Act;

“proposed participant” means a person who makes an application to purchase or otherwise acquire digital assets pursuant to the Initial Coin Offering.

**PART 2 - MINIMUM REQUIRED INFORMATION FOR INITIAL COIN OFFERING**

3. **Application for consent**

An application for consent shall be submitted to the Minister in such form as the Minister may direct and shall include the minimum required information set forth in this Part and the ICO offer document.

4. **Minimum required information regarding the proposed project**

An application for consent shall include the following minimum information relating to the Initial Coin Offering project including—

(a) the name of the project and the names of the project managers;

(b) the name of the applicant, including addresses, email addresses and websites and any other jurisdiction in which the applicant is registered;
(c) the details of all persons involved with the ICO including the digital asset issuer, the owner of the platform, ICO organisers and other such information; and

(d) confirmation as to whether any one or more of the persons referred to in paragraph (a), (b), or (c) have applied for or been granted a licence, permission or other authority under any law relating to the proposed ICO or otherwise relating to financial markets in any other country or countries and, if so, the relevant details.

5. Minimum required information describing the project

An applicant shall submit the following minimum information describing the ICO project—

(a) information about the project organisation and project planning including the project phases and milestones and estimated time for delivery;

(b) key features of the product or service to be developed;

(c) the proposed market participants that the ICO seeks to target and the proposed jurisdiction or jurisdictions;

(d) whether there are any restrictions regarding participants;

(e) information regarding the technologies to be used and including whether distributed ledger technology or other new or existing technologies will be used (and whether this is an open source project);

(f) the means by which the ICO will be financed;

(g) the amount of money equivalent (in Bermuda dollars) that the ICO is intended to raise by reference to the number of digital assets;

(h) whether such funds have already been allocated to a specific project and how any surplus funds would be handled.

6. Minimum required information regarding digital asset issue

An applicant shall provide the following minimum information describing the digital asset issue—

(a) whether a digital asset has been created, or will be created in the course of the ICO; and if the latter, the steps for the creation of the digital asset by reference to the technical standards;

(b) the amount or proportion of the digital assets that will be retained by the project operator and project development team and whether there is a vesting period and, if so, details of the timeline;

(c) the point at which, by whom and the manner in which the digital asset will be transferred to the participants;

(d) a detailed description of the functionalities that are planned for the digital asset and a description of the point or points when the planned functionalities will apply or become active;

(e) the rights that the participant would acquire and any obligations to be imposed on the participant and how they will be documented (specifics regarding participation and issuing conditions are required);
whether a financial institution that is subject to anti-money-laundering and anti-terrorist financing laws in Bermuda or any other jurisdiction will be engaged to meet due diligence requirements under Bermuda laws and, if so, detailed information about the relevant processes and the relevant financial institution must be provided;

whether the applicant or any other persons involved in the ICO have previously completed or attempted to complete an ICO in Bermuda, or any other jurisdiction, and if so the status of the ICO and any other project funded thereby;

whether the digital asset has been marketed by the applicant or any other party identified in regulation 4 as an investment.

7. Minimum required information regarding any proposed transfer following digital asset issue

An applicant shall include with his application the following minimum information—

(a) whether the digital asset can be traded or transferred between persons with or without an intermediary or other third party custodian and information about compatible wallets and technical standards;

(b) whether the digital asset will already be functional at the time of transfer and, if so, to what extent;

(c) whether it is intended that the digital asset may be used in exchange for goods or services of the applicant or third parties;

(d) whether there are plans for the project operator or issuer to buy back the digital assets and the terms of the repurchase.

8. Minimum required information regarding compliance issues

An applicant for consent shall submit the following minimum required information regarding compliance features which it intends to include in its systems—

(a) a description of the technical standards or software, blockchain or other distributed ledger technology that will be used to identify participants in the ICO;

(b) a description of the procedures or protocol that will be used to confirm the identities of the participants in the ICO; and

(c) a description of the measures that will be established to enable an audit and production of a compliance statement at the close of the Initial Coin Offering confirming compliance with these Regulations and other relevant provisions of Part IIIA of the Act.

PART 3 - COMPLIANCE MEASURES

9. Meaning of “appropriate measures”

For the purposes of these Regulations, appropriate measures include the following—

(a) identifying any participant and verifying the participant’s identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) in the case of a legal entity or legal arrangement, identifying the participant and verifying the identity of the relevant natural person carrying out the transaction or proposed transaction;
(c) in the case of a person purporting to act on behalf of a participant, verifying that the person is in fact so authorised and identifying and verifying the identity of that person; and

(d) conducting enhanced due diligence whenever necessary in accordance with regulation 12.

10. Verification of identity and timing of verification

(1) A company shall, in relation to an Initial Coin Offering, ensure that it applies appropriate measures relating to identification and verification of the participants in the Initial Coin Offering.

(2) Subject to paragraph (3), a company must verify the identity of a participant before the issuance of a digital asset to the participant with respect to the ICO.

(3) Such verification may be completed after the issue of a digital asset if—

(a) the rights and functionalities are such that the digital asset can only be used for services and products provided by the ICO issuer;

(b) this is necessary not to interrupt the normal conduct of business;

(c) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after the digital asset is issued;

(d) any money laundering or terrorist financing risks that may arise are effectively managed; and

(e) it appears that a participant, or any person purporting to act on behalf of the participant, is not or does not appear to be anonymous or fictitious.

11. Requirement to cease transactions, etc.

(1) Where in relation to any participant or proposed participant in an ICO, a company is unable to apply appropriate measures in accordance with the provisions of these Regulations, the company—

(a) shall not open any account or carry out a transaction for the person;

(b) shall not issue a digital asset to the person;

(c) in the case of a participant in an ICO, shall not permit that participant to undertake any further transactions of any nature, until such time as the company has been able to apply the measures; and

(d) shall terminate any existing business relationship with the person.

(2) In the event that an existing business relationship is terminated in accordance with paragraph (1)(d), details regarding the termination shall be included in any final audit or other compliance report required by the Registrar.

12. Enhanced due diligence

(1) A company must apply on a risk-sensitive basis enhanced due diligence to business relationships with existing participants or proposed participants in its ICO—

(a) in accordance with paragraph (2);

(b) in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force;
(c) in instances where a person or a transaction is from or in a country that represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions;

(d) in any other situation which by its nature may present a higher risk of money laundering or terrorist financing;

(e) in instances where the company suspects money laundering or terrorist financing; or

(f) in instances where the company doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.

(2) Where any of the circumstances in paragraph (1) exist, a company must take specific and adequate measures to compensate for the potential risk, for example by applying one or more of the following measures—

(a) ensuring that the participant’s identity is established by additional documents, data or information;

(b) employing supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an AML/ATF regulated financial institution (or equivalent institution) which is subject to equivalent regulations;

(c) ensuring that the first payment is carried out through an account opened in the participant’s name with a banking institution;

(d) monitoring the participant’s activity.

13. Reliance on third parties

(1) A company may rely on a person who falls within paragraph (2) to apply any measures required by these Regulations, provided that—

(a) the other person consents to being relied on; and

(b) notwithstanding the company’s reliance on the other person, the company—

(i) must obtain information sufficient to identify participants;

(ii) must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident; and

(iii) will remain liable for any failure to apply such measures.

(2) The persons are—

(a) an AML/ATF regulated financial institution;

(b) an independent professional supervised for the purposes of these Regulations by a designated professional body in accordance with section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

(c) a person who carries on business in a country or territory other than Bermuda who is—

(i) an institution that carries on business corresponding to the business of an AML/ATF regulated financial institution or independent professional;

(ii) in the case of an independent professional, subject to mandatory professional registration recognised by law;
(iii) subject to requirements equivalent to those laid down in these Regulations; and
(iv) supervised for compliance with requirements equivalent to supervision by his supervisory authority.

14. Record-keeping

(1) A company must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) In respect of a business relationship or an occasional transaction, the records are—
   (a) a copy of, or the references to, the evidence of the person’s identity obtained pursuant to these Regulations, together with the results of any analysis or enhanced due diligence undertaken in relation to that person; and
   (b) the records of transactions, provided that such records must be sufficient to permit the reconstruction of individual transactions.

(3) In this regulation, the period is—
   (a) in the case of records in paragraph 2(a), for the duration of the business relationship and five years beginning on the date on which the business relationship ends or five years beginning on the date the occasional transaction is completed;
   (b) in the case of records in paragraph 2(b), five years beginning on the date the transaction is completed.

(4) A company who is relied on by another person must keep the records specified in paragraph (2)(a) for five years beginning on the date on which he is relied on for the purposes of these Regulations in relation to any business relationship or occasional transaction.

(5) But in any case where a company has been notified in writing by a police officer that particular records are or may be relevant to an investigation which is being carried out, the company must keep the records pending the outcome of the investigation.

(6) For the avoidance of doubt, all documents and findings related to the investigations of—
   (a) complex transactions;
   (b) unusually large transactions; or
   (c) unusual patterns of transactions,

must be recorded and kept for a minimum period of five years and shall be made available to competent authorities upon request.

(7) A person referred to in regulation 13(2)(a) or (b) who is relied on must, if requested by the person relying on him within the period referred to in paragraph (4)—
   (a) make available to the person who is relying on him as soon as reasonably practicable after the request but not later than five business days thereafter any information about the participant which he obtained when applying appropriate due diligence measures; and
   (b) without delay forward to the person who is relying on him, copies of any identification and verification data and other relevant documents on the identity of the participant which he obtained when applying those measures.
(8) A company who relies on a person referred to in regulation 13(2)(c) (a “third party”) to apply appropriate measures must take steps to ensure that the third party will, if requested by the company, within the period referred to in paragraph (4)—
   (a) as soon as reasonably practicable make available to him any information about the participant; and
   (b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the participant, which the third party obtained when applying those measures.

(9) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 13(1).

15. Audit of ICO

A company must—
   (a) carry out an internal compliance review with respect to the conduct of its ICO and financial operations (including financial expenditures, if any) connected therewith and prepare a compliance report; and
   (b) file with the compliance report with the Registrar in such form as the Registrar may determine,

within 90 days of completion of the ICO.

PART 4 - MISCELLANEOUS

16. Class of digital assets

For the purposes of an ICO, “class” means digital assets having the same rights, features and attributes.

17. Meaning of “promoter”

A person is not a promoter for purposes of an ICO solely by virtue of his provision of professional services to the company in relation to the ICO.

18. Security of digital assets, etc.

The company shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

Made this 6th day of July 2018

Acting Minister of Finance

[Operative Date: 10 July 2018]
MUTUAL COMPANIES (NON-APPLICATION OF COMPANIES ACT) REGULATIONS 1995

1. Citation
2. Certain sections of Companies Act 1981 not to apply to mutual companies

1. CITATION

These Regulations may be cited as the Mutual Companies (Non-Application of Companies Act) Regulations 1995.

2. CERTAIN SECTIONS OF COMPANIES ACT 1981 NOT TO APPLY TO MUTUAL COMPANIES

Section 65(6) and section 66 of the Companies Act 1981 shall not apply to a mutual company.

Dated this 27 day of July 1995

Minister of Finance
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<td>Registering a memorandum of association under section 14</td>
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### GOVERNMENT FEES REGULATIONS 1976 (SELECT PROVISIONS)

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<td>(b) under Part V of the Act any charge that may be registered thereunder on the assets of an exempted company or an overseas company -</td>
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<td>(i) where the amount secured is $1,000,000 or less</td>
<td>$380</td>
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<td>(ii) where the amount secured is over $1,000,000</td>
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<td>(19) Registering or filing any document by this Act required or authorized to be delivered, sent or forwarded to the Registrar other than a return of shareholdings or a prospectus or the memorandum or the abstract required to be delivered to the Registrar by the liquidator of a company in a winding-up or any document the fee for which is specifically provided</td>
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### HEAD 28 - EXEMPTED UNDERTAKINGS TAX PROTECTION ACT 1966

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The Minister, in exercise of the powers conferred upon him by section 34 of the Companies Act 1981, after consultation with the Institute of Chartered Accountants of Bermuda, makes the following Rules:

1. **Citation**

These Rules may be cited as the Companies (Financial Statements and Auditor’s Report) Rules 1995.

2. **Interpretation**

References in these Rules -

(a) to the Act mean the Companies Act 1981;

(b) to a company shall, in the case of a unit trust, be construed as references to the unit trust;

(c) to the first financial period may, if the directors of the company so determine, be construed as the period ending with the second financial year end;

(d) to financial statements, auditor’s reports and auditor’s statement may, in the case of a prospectus in respect of an offer of a specified series or specified class of shares, if the directors of the company so determine, be construed in respect only of the series or class of shares so specified;

(e) to generally accepted accounting principles mean the generally accepted accounting principles referred to in section 84 of the Act; and

(f) to generally accepted auditing standards means the generally accepted auditing standards referred to in section 90 of the Act.

3. **Information to be contained in financial statements**

(1) The financial statements of a company required to be attached to a prospectus by section 27(1)(h) of the Act shall
(a) in the case of a company where the prospectus is to be issued before the earlier of -

(i) the date on which the directors approved financial statements in respect of the company’s first financial period for laying before a general meeting of the company;

or

(ii) six months after the close of the company’s first financial period,

consist of a written statement specifying the matters referred to in paragraph (2); and

(b) in any other case, shall comply with paragraph (3).

(2) The statement referred to in paragraph (1)(a) shall specify whether, on the date of issue of the prospectus -

(a) the company has commenced business;

(b) any dividends have been declared or paid;

(c) the directors have approved any financial statements for laying before a general meeting of the company; and

(d) the auditor has audited any financial statements of the company.

(3) The financial statements referred to in paragraph (1)(b) shall -

(a) in the case of a company whose directors have approved financial statements, prepared at a date not more than eighteen months prior to the date of issue of the prospectus, for laying before a general meeting of the company under section 84(1) of the Act, consist of the most recent of such financial statements; and

(b) in any other case, shall consist of -

(i) a balance sheet as of a financial year end which shall not be more than eighteen months prior to the date specified on the prospectus;

(ii) a statement of results of operations for a period of not less than one year ending on the balance sheet date or, in the case of a company which has been incorporated for a period of less than a year, for the period from such incorporation ending on the balance sheet date;

(iii) a statement of retained earnings or deficit for the period covered by the statement of results of operations;

(iv) a statement of changes in financial position for the period covered by the statement of results of operations;

(v) notes to the financial statements which notes shall include a description of, and identify, the generally accepted accounting principles used in the preparation of the financial statements; and

(vi) such further information as may be required by the Act and the company’s own Act of incorporation, if any, or its memorandum, and bye-laws.

(4) In the case of a company which is continuously offering its shares to the public and which, on the date of the issue of the initial prospectus had not commenced business, the financial statements attached to
the initial prospectus shall be deemed to satisfy the requirements of this rule and rule 4 for the purposes of any subsequent prospectus if the date of issue of such prospectus is the earlier of -

(a) six months after the close of the first financial period; or

(b) the date on which financial statements in respect of the close of such first financial period have been approved by the directors for laying before a general meeting of the company.

4. Documents to be attached to financial statements

(1) In the case of a company which is not a mutual fund or a unit trust there shall also be attached to the financial statements of the company summary unaudited information in respect of the immediately preceding five financial year ends of the company, or in respect of such shorter period as may be available, and the summary unaudited information shall specify, as appropriate -

(a) in respect of balance sheet items -
   (i) total assets;
   (ii) long term liabilities;
   (iii) shareholders’ equity;
   (iv) share capital in issue by class; and
   (v) shareholder’s equity per share by class of share;

(b) in respect of statement of results of operations items -
   (i) sales or gross income;
   (ii) extraordinary items;
   (iii) realised gains or losses on investment sales;
   (iv) net income;
   (v) earnings per share by class of share; and

(c) in respect of statement of changes in financial position items, cash generated from, or used by -
   (i) operating activities;
   (ii) investing activities;
   (iii) financing activities as they relate to borrowing;
   (iv) financing activities as they relate to shareholders’ equity; and
   (v) dividends paid per share by class of share,

(2) Where -

(a) the financial statements referred to in rule 3(1)(b) have been prepared more than six months before the date of the issue of the prospectus; or

(b) the financial statements consist of a written statement, prepared in accordance with rule 3(1)(a),
and the company has commenced business, there shall also be attached to the financial statements, where applicable, unaudited financial statements containing the matters specified in paragraph (3).

(3) The matters referred to in paragraph (2) are -

(a) balance sheet as of the most recent financial year end unless -

(i) such financial year has been covered by the financial statements mentioned in rule 3(1)(b); or

(ii) such financial year ended less than one month prior to the date of issue of prospectus;

(b) balance sheet as of a date which is not more than four months prior to the date of issue of the prospectus;

(c) a statement of the results of operations for the period beginning on the date of the financial statements mentioned in rule 3(1)(b) (or, in the case of a company which is subject to rule 3(1)(a), beginning on the date of incorporation) and ending on the date of the balance sheet required under sub-paragraph (b);

(d) a statement of retained earnings of deficit for the period covered by the statement of results of operations; and

(e) a statement of changes in financial position for the period covered by the statement of results of operations.

(4) The prospectus shall also include a bold legend to the effect that the unaudited financial statements mentioned in paragraph (2) have not been audited by the auditor and either than -

(a) the report of the auditor relates to financial statements covering a period which ended more than six months prior to the date of the issue of the prospectus; or

(b) the auditor has not completed the audit of any financial statements as of the date of the report.

(5) At the discretion of the directors of the company, there may be attached to the financial statements pro-forma financial statements comprising -

(a) where the company has presented such financial statements, a pro-forma balance sheet; and

(b) where a business is being acquired by the company out of the proceeds of the security issue covered by the prospectus and the company has presented such financial statements -

(i) a pro-forma combined statement of the results of operations; and

(ii) a pro-forma combined statement of changes in financial position.

(6) Where pro-forma financial statements are attached to a prospectus pursuant to rule 4(5), there shall be attached to those pro-forma financial statements a compilation report by the auditor addressed to the directors and prepared in accordance with generally accepted auditing standards stating the procedures the auditor has applied and whether the pro-forma financial statements described in paragraph (5) have been properly compiled.

(7) A prospectus shall also include a statement disclosing events occurring subsequent to the date of the audited financial statements (or where, in accordance with rules 3(1)(a) or 3(2), there are no audited financial
statements, subsequent to the date of incorporation) but before the date of issue of the prospectus which either provide material additional information relating to conditions that existed at the date of the financial statements (or the date of incorporation) or which cause significant changes to assets or liabilities or which will or may have a significant effect on the future operations of the company or a statement that there are no such events.

5. Auditor's Report or Auditor's Statement

(1) In the case of a company where the prospectus is to be issued before the earlier of either the date the directors have approved any financial statements in respect of the company’s first financial period for laying before a general meeting of the company, or six months after the close of the company’s first financial period, there shall be attached to the prospectus a written statement by the auditor of the company confirming his acceptance of the appointment as auditor of the company.

(2) In a case, other than the case referred to in paragraph (1), an auditor’s report shall be attached to the prospectus and such report shall be prepared in accordance with generally accepted auditing standards and shall be in respect of the financial statements specified in paragraph 3(3).

(3) Where the report of the auditor referred to in paragraph (2) above is attached to a prospectus, a copy of each of the financial statements referred to in rule 3(1)(b) shall be attached to the auditor's report.

6. Consent of Auditor

A report or statement of the auditor of the company shall not be contained in or attached to a prospectus and the name of the auditor of the company shall not be contained in a prospectus unless:

   (a) the auditor has given, and has not, before delivery of a copy of the prospectus for filing with the Registrar, withdrawn his written consent, which consent shall be dated within one week of the date of the filing of the prospectus with the Registrar, to the inclusion of the auditor’s name and his report or statement in the form and context in which they are in fact included; and

   (b) a statement that the auditor has given and has not withdrawn that consent appears in the prospectus.

7. Revokes B.R. No. 28 of 1992


Dated this 31st day of October 1995

Minister of Finance
LIST OF STATUTORY APPOINTMENTS

APPOINTED STOCK EXCHANGES (SECTION 2(9))

The Alberta Stock Exchange
American Stock Exchange (see NYSE Euronext below)
ASX Limited (Australian Securities Exchange) (formerly The Australian Stock Exchange)
The Bermuda Stock Exchange
The Bolsa de Madrid Bolsa de Valores, Mercadorias & Futuros de Sao Paulo (formerly Sao Paulo Stock Exchange)
Bolsa Mexicana de Valores
Borsa Italiana
Boston Stock Exchange
Bursa Malaysia Securities Berhad
Canadian Dealing Network
Canadian Venture Exchange
Dubai International Financial Exchange (see NASDAQ Dubai below)
Euro MTF Market
Euronext Exchange
The European Association of Security Dealers Automated Quotations
Frankfurt Stock Exchange
The Kuala Lumpur Stock Exchange
The Stock Exchange of Hong Kong Ltd
The Irish Stock Exchange
Indonesia Stock Exchange
JASDAQ Market
The Johannesburg Stock Exchange
London Stock Exchange
Moscow Interbank Currency Exchange (A-1 Quotation List)
Société de la Bourse de Luxembourg S.A. (Luxembourg Stock Exchange)
Bourse de Montreal (Montreal Stock Exchange)
The NASDAQ Stock Market. Inc. (formerly known as the
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NASDAQ Dubai (formerly The Dubai International Financial Exchange) 1161

New York Stock Exchange, Inc 1162

New Zealand Stock Exchange 1164

Nya Marknaden 1165

NYSE Euronext (formerly The American Stock Exchange Inc.) 1166

Oslo Axess Exchange 1167

Oslo Børs (Oslo Stock Exchange) 1168

Paris Bourse 1169

PLUS Markets 1170

Qatar Exchange 1171

Sao Paulo Stock Exchange (see Bolsa de Valores, Mercadorias & Futuros de Sao Paulo above) 1172

Shenzhen Exchange 1173

Singapore Exchange Securities Trading Limited 1174

Specialist Fund Market 1175

Taiwan Stock Exchange 1176

Tel Aviv Stock Exchange 1177

Tokyo Stock Exchange 1178

The Toronto Stock Exchange 1179

The TSX Venture Exchange (Toronto) 1180

Vancouver Stock Exchange 1181

Viennese Stock Exchange 1182

London Stock Exchange - Alternative Investment Market (AIM) 1183

Shanghai Stock Exchange 1184

Stockholm Stock Exchange 1185

Swiss Exchange 1186
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APPOINTED JURISDICTIONS (SECTION 2(10))

Federal Government of Canada and all the provinces and territories of Canada

All the states of the United States of America

Commonwealth of Australia and all the states of Australia

Austria
Belgium
Denmark

Dubai International Financial Centre

Finland
France
Germany
Greece
Guernsey
Ireland
Isle of Man
Italy
Jersey
Luxembourg
Mexico
Netherlands
Portugal
Singapore
Spain
Sweden
Switzerland

United Kingdom
*Cayman Islands
*British Virgin Islands
*Barbados
*Bahamas
*Netherlands Antilles
LIST OF STATUTORY APPOINTMENTS

[EXCEPTION: Except for those companies which carry on the business of a financial institution as defined by the Bermuda Monetary Authority Act 1969]

COMPETENT REGULATORY AUTHORITIES (SECTION 2(1))

Bermuda Monetary Authority
The Australian Securities and Investment Commission
Austrian Federal Ministry of Finance
Commission de Surveillance du Secteur Financier
Dubai Financial Services Authority
Luxembourg Commissariat aux Bourses
Hong Kong Securities and Futures Commission
Ontario Securities Commission
United States Securities and Exchange Commission
Swedish Financial Supervisory Authority
Monetary Authority of Singapore
The Financial Services Authority
Securities and Exchange Commission of Brazil

Japan’s Financial Services Agency and its delegate, the Kanto Local Finance Bureau of the Ministry of Finance of Japan
Securities Commission, Malaysia

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (SECTION 84(5))

International Accounting Standards developed by the International Accounting Standards Committee
International Financial Reporting Standards developed by the International Accounting Standards Board

GENERALLY ACCEPTED AUDITING STANDARDS (SECTION 90(4))

International Standards on Auditing developed by the International Federation of Accountants

SECURITIES TRANSFER AGENTS (SECTION 272A(4)(A))

ASX Settlement PTY Limited (formerly known as ASX Settlement and Transfer Corporation PTY)
Bank of New York (see Bank of New York Mellon Corporation)
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Bank of New York Mellon Corporation (formerly known as The Bank of New York) 1216
Caisse Interprofessionnelle de Dépôts et de Virements de Titres - Interprofessionele Effectendeposito-en
Girokas NA/SA (Euroclear Belgium) 1217
Capita IRG Plc of Beckenham Kent, United Kingdom
Capita IRG Trustees Limited 1218
Clearstream Banking, societe anonyme 1219
Clearstream International, Luxembourg 1220
Computershare Investor Services 2004 (Pty) Ltd. 1221
Computershare Investor Services Limited (formerly known as Computershare Registry Services Limited) 1222
Computershare Investor Services, LLC (Chicago USA) 1223
Computershare Investor Services plc 1224
Computershare Investor Services Pty Ltd. 1225
Computershare Registry Services Limited 1226
Computershare Shareholder Services, Inc. (formerly known as EquiServe, Inc.) 1227
Continental Stock Transfer & Trust Company 1228
Depository Trust Company (The) 1229
DnB NOR Bank ASA 1230
EquiServe Inc. 1231
Euroclear Finland Oy (Euroclear Finland) 1232
Euroclear France SA (Euroclear France) 1233
Euroclear S.A. / N.V. of Euroclear Bank SA/NV 1234
Euroclear Sweden AB (Euroclear Sweden) 1235
Euroclear UK & Ireland Limited (Euroclear UK) 1236
Mellon Investor Services LLC 1237
Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V. (Euroclear Nederland) 1238
Nordea Bank Norge ASA 1239
The Bermuda Stock Exchange 1240
The American Stock Transfer & Trust Company 1241
Verdipapirsentralen ASA 1242
EXEMPTED UNDERTAKINGS TAX PROTECTION ACT 1966

BERMUDA
1966 : 41

EXEMPTED UNDERTAKINGS TAX PROTECTION ACT 1966

[Date of Assent 29th March, 1966]
[Operative Date 29th March, 1966]

ARRANGEMENT OF SECTIONS
1. Interpretation
2. Minister may give assurance
3. Application to residents of Bermuda
4. Repeal

1. INTERPRETATION

In this Act-

“exempted undertaking” means -

(a) an exempted company within section 127 of the Companies Act 1981; or
(b) an exempted partnership within section 2 of the Exempted Partnerships Act 1992; or
(c) an exempted unit trust scheme; or
(d) an exempted LLC within section 21 of the Limited Liability Company Act 2016;

“exempted unit trust scheme” means an arrangement made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities whereby those persons may participate as beneficiaries under a non-resident trust in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“Minister” means the Minister of Finance.

“non-resident trust” means a trust of which the trustee has been designated under the Exchange Control Regulations 1973 as not resident in Bermuda.

2. MINISTER MAY GIVE ASSURANCE

(1) The Minister is hereby authorised to enter into an arrangement with any exempted undertaking that shall make application to the Accountant General therefor, whereby such undertakings may be given an assurance that, in the event of there being enacted in Bermuda any legislation imposing tax computed
on profits or income or computed on any capital asset, gain or appreciation, then the imposition of any such tax shall not be applicable to such undertakings or to any of its operations.

(2) Any such arrangement as is referred to in subsection (1) may include an assurance that the aforesaid taxes, and any tax in the nature of estate duty or inheritance tax, shall not be applicable to the shares, LLC interest\(^{1251}\), debentures or other obligations of such undertaking.

(3) Any such assurance as aforesaid may be for any period not extending beyond 31 March 2035\(^{1252}\)\(^{1253}\) and may be in such form as the Minister may determine.

3. APPLICATION TO RESIDENTS OF BERMUDA

In the event of the enactment of any legislation in Bermuda imposing any tax referred to in this Act, then nothing contained herein shall be construed so as to prevent the application of any such tax to such persons ordinarily resident in Bermuda to whom it is appropriate that such tax should be applied.

4. REPEAL

[Omitted]
STAMP DUTIES (INTERNATIONAL BUSINESS RELIEF) ACT 1990

BERMUDA

1990: No. 15

STAMP DUTIES (INTERNATIONAL BUSINESS RELIEF) ACT 1990

1. Short title
2. Construction and Interpretation
3. Stamp duty on certain instruments abolished
4. Exception for instruments disposing of Bermuda property

[Date of Assent 30th March, 1990]
[Operative Date 1st April, 1990]

1. SHORT TITLE

This Act may be cited as the Stamp Duties (International Business Relief) Act 1990

2. CONSTRUCTION AND INTERPRETATION

(1) This Act shall be read and construed as one with the Stamp Duties Act 1976 (the “Act”).

(2) Without prejudice to subsection (1), any expression that is used in this Act that is also used in the Act has in this Act the meaning that it has in the Act, but subject to subsection (3).

(3) In this Act -

“Bermuda property”, in relation to an instrument, means property answering the description in subsections (2)(b), (3) and (4) of section 47 of the Stamp Duties Act 1976, but subject -

(a) to the exclusion of property described in sub-paragraph (ii) of paragraph (b) of the abovementioned subsection (2); and

(b) to the substitution, for the references in those subsections to the time of the death of the deceased, of references to the date of execution of the instrument;¹²⁵⁴

“disposition” means disposition of any kind, whether by way of sale, lease, loan, gift or otherwise;

“exempted company” and “permit company” have respectively the meanings that they have in subsection (1) of section 2 of the Companies Act 1981;

“exempted LLC” has the meaning assigned to it by section 21 of the Limited Liability Company Act 2016;¹²⁵⁵

“exempted partnership” has the meaning assigned to it by the Exempted Partnerships Act 1958;
“international business” means any exempted company, permit company, exempted unit trust scheme (as defined in section 1 of the Exempted Undertakings Tax Protection Act 1966), overseas partnership, exempted partnership or exempted LLC; “overseas partnership” has the meaning assigned to it by section 2(1) of the Overseas Partnerships Act 1995.

3. STAMP DUTY ON CERTAIN INSTRUMENTS ABOLISHED

Notwithstanding anything to the contrary in the Act but subject to section 4, an instrument is exempt from duty if it is an instrument executed on or after 1st April, 1990 by an international business (being an international business properly a party to the instrument), or by a person in respect of an interest which he has in, or in property of, an international business, whether or not the instrument has also been executed by some other person.

4. EXCEPTION FOR INSTRUMENT DISPOSING OF BERMUDA PROPERTY

Section 3 does not have effect in relation to any instrument effecting a disposition, or constituting an agreement for the disposition, of Bermuda property.

From Stamp Duties Act 1976, Section 47(3)

The definition of “Bermuda property” (S.47 as modified by S.2 of The Stamp Duties (International Business Relief) Act 1990) is a follows:

(2) For the purposes of this section,

....

(b) the term [“Bermuda property”] means:

(i) real and personal property of any kind situated or being in Bermuda, and the proceeds of the sale thereof any investment for the time being representing the same;

(3) The term “property” in subsections (2) shall not include:

(a) any moneys in an institution licensed as a bank or a deposit company under the Banks and Deposit Companies Act 1999, being moneys denominated in a currency other than Bermuda area currency; or

(b) any security held in an exempted undertaking as defined in section 1 of the Exempted Undertakings Tax Protection Act 1966; or

(c) any security evidencing participation in mutual fund business or unit trust scheme in either case carried on by a company formed in Bermuda, provided the security is denominated in a currency other than Bermuda area currency; or

(d) any security to the extent that it represents foreign currency securities (including any shares in any company formed outside Bermuda or in any exempt undertaking) or land that is situate outside Bermuda being securities or land that are wholly owned by a company formed in Bermuda provided the latter company is a company as to which the Registrar is satisfied -
(i) that at the [date of execution of the instrument] the company was wholly owned beneficially by individuals not exceeding five in number; and

(ii) that throughout the company’s last complete year of business immediately preceding the [date of execution of the instrument] both -

(aa) not less than seventy five percent of the assets of the company was in the form of securities, or consisted of land that is situate outside Bermuda, (or partly the one and partly the other); and

(bb) not less than eighty five per cent of the net income of the company was derived from securities or land such as are described in division (aa) above, (or partly the one and partly the other).

(4) For the purposes of subsection (2) shares, stock or marketable securities which qualify for exemption from duty on transfer under paragraph (e) of section 4 [any stock or marketable security issued by or on behalf of any Government or State, including the Government of Bermuda, or of any share or marketable security issued by or on behalf of any corporation, company or body of persons incorporated, former or established out of Bermuda, except shares registered in a register kept in Bermuda in conformity with any statutory provision] shall be deemed not to be property situated or being in Bermuda.
1. **INTERPRETATION**

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

   “Authority” means the Bermuda Monetary Authority established under section 2;

   “company” means a company to which the Companies Act 1981 applies;

   “credit union” has the meaning assigned to it in the Credit Unions Act 2010;

   “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to produce a copy of the information in legible form;

   “dollar” means the Bermudian dollar;

   “financial crime” means any offence which involves—

   (a) dishonesty or fraud;

   (b) unlawful activity connected with a financial market;

   (c) dealing with the proceeds of “criminal conduct” as defined by the Proceeds of Crime Act 1997; or
(d) “terrorist financing”, as defined in the Anti-Terrorism (Financial and Other Measures) Act;

“financial institution” means a person, body or entity specified in the Third Schedule;

d) “freely convertible” in relation to any currency, means freely convertible, in the hands of a non-resident holder of the currency, into gold or any other currency;

“holding company” has the meaning given in the Companies Act 1981;

“institution” has the meaning given in the Banks and Deposit Companies Act 1999;

“Minister” means the Minister of Finance;

“officer” in relation to the Authority includes director and secretary;

“public body” has the meaning given in section 3(2);

“resident” means a person who is deemed to be resident under regulation 3 of the Exchange Control Regulations 1973;

“specified securities” means securities denominated in any freely convertible currency or in Special Drawing Rights of the International Monetary Fund being—

(a) securities issued or guaranteed by the Government of the country of issue being a country whose currency is freely convertible; or

(b) securities issued or guaranteed by the International Bank for Reconstruction and Development; or

(c) quoted securities of an approved corporation; and in this paragraph—

“quoted securities” means securities, including debentures and fully paid shares, quoted on a stock exchange recognized by the Minister for the purposes of this paragraph; and

“approved corporation” means a company or corporation having in the opinion of the Authority shareholders’ equity of a value of not less than $100,000,000 at the time of the investment; or

(d) securities issued or guaranteed by any organization recognized by the Minister as an international organization for the purposes of this paragraph; or

(e) securities issued by a government sponsored enterprise recognized by the Minister for this purpose;

“subsidiary company” has the meaning given in the Companies Act 1981.

2. ESTABLISHMENT OF THE BERMUDA MONETARY AUTHORITY

(1) There shall be established an Authority to be known as “the Bermuda Monetary Authority” which shall have such powers and shall perform such functions as are assigned to it by this Act or any other Act and the Regulations made thereunder.

3. PRINCIPAL OBJECTS

(1) The principal objects of the Authority shall be—
(a) to issue and redeem notes and coins;
(b) to supervise, regulate and inspect any financial institution which operates in or from within Bermuda;
(ba) to promote the financial stability and soundness of financial institutions;
(bb) to supervise, regulate or approve the issue of financial instruments by financial institutions or by residents;
(bc) to assist with the detection and prevention of financial crime;
(bd) to assist foreign regulatory authorities in the discharge of their functions;
(be) to perform the duties conferred on it by section 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
(c) to foster close relations between financial institutions themselves and between the financial institutions and the Government;
(d) in accordance with any statutory provision in that behalf to manage exchange control and regulate transactions in foreign currency or gold on behalf of the Government;
(e) to advise and assist the Government and public bodies on banking and other financial and monetary matters; and
(f) to perform such functions as may be necessary to fulfil such principal objects.

20A. AUTHORITY TO SUPERVISE, REGULATE AND INSPECT FINANCIAL INSTITUTIONS

(1) Every person, body or entity specified in the Third Schedule (in this Act referred to as a “financial institution”) operating in or from within Bermuda shall be subject under this Act or the Regulations made thereunder to supervision, regulation and inspection by the Authority.

(2) The Minister may by order replace, add to or vary the Third Schedule.

(3) An order made under subsection (2) shall be subject to negative resolution procedure.

20AA. MONEY SERVICE BUSINESS

(1) For the purpose of this section, “money service business” means the business of providing any of the following services to the general public –

(a) money transmission services;
(b) cashing cheques which are made payable to customers and guaranteeing cheques;
(c) issuing, selling or redeeming money orders or traveller’s cheques for cash;
(d) issuing credit or debit cards, or otherwise providing means of electronic payment;
(e) intermediating means of payment over the internet;
(f) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

(2) The Minister may by regulations subject to negative resolution procedure, make provision for the regulation by the Authority of money service businesses.

(3) Without limiting the generality of subsection (2), regulations may in particular provide with respect to any of the following matters—

(a) the licensing of money service businesses;

(b) the persons by whom and the manner in which applications in connection with licensing are to be made;

(c) the information and evidence to be provided in connection with such applications and such supplementary information or evidence as may be required by the Authority;

(d) the issue of licences and their surrender;

(e) the refusal, and termination of licences in specified circumstances;

(f) matters arising out of the expiration, or termination of licences; and

(g) the charging of fees by the Authority in connection with the issue and holding of licences.

20B. FEES

The fees prescribed in the Fourth Schedule, shall be paid by certain financial institutions, in accordance with the legislation specified in the various Heads in the Fourth Schedule, to the Bermuda Monetary Authority.

21. RELATIONS WITH GOVERNMENT

(1) The Authority -

(a) shall act as adviser to the Minister on policy matters relating to any financial institution and on monetary or financial matters generally;

(b) may act as investment adviser to the Government or to any public body; and

(c) may act generally as agent for the Government where it can do so appropriately and consistently with its functions under this Act;

(d) may, in connection with the incorporation of companies, which propose to carry on any restricted business activity as set out in the Ninth Schedule to the Companies Act 1981 the establishment of formation of partnerships, investment funds as defined in Section 2 of the Investment Funds Act 2006, sole traders or other entities or in respect of an application for a permit pursuant to section 134 of the Companies Act 1981 or pursuant to section 4 of the Overseas Partnerships Act 1995, process applications and make recommendations to the Minister or in respect of all matters relating, ancillary or consequential thereto occurring before or after such incorporation, establishment, formation or application make recommendations to the Minister.

(1A) The Minister may in writing, delegate to the Authority, powers for the purpose of prevention and detection of financial crime.
(2) The Minister may from time to time, after consultation with the Authority, give to the Authority in writing such general directions as appear to the Minister to be necessary in the public interest and the Authority shall act in accordance with such directions.

22. **FURNISHING INFORMATION**

(1) Subject to this Act, the Authority may require -

(a) any person to furnish it at such time or times or at such intervals or in respect of such period or periods with such information as the Authority may reasonably require to discharge its functions under section 21(1)(a) or 21(1)(d); or

(b) any financial institution to furnish it at such time or times or at such intervals or in respect of such period or periods with such information as the Authority may reasonably require to discharge its functions in respect of the supervision, regulation or inspection of the financial institution.

(2) Where the Authority requires information to discharge its functions under section 21(1)(d), the information shall be such as the Minister determines under section 4A(3) or section 6(1) of the Companies Act 1981 but no person shall be obliged to furnish the information.

(3) Subject to this Act, the Authority may -

(a) require any financial institution to produce within such time and at such place such document or documents;

(b) authorise an officer, a servant, an agent or an adviser of the Authority, on producing evidence of his authority, to require any financial institution to provide him forthwith with such information or to produce to him forthwith such documents as he may specify, being such document or information as the Authority may reasonably require for the discharge of its functions in respect of the supervision, regulation or inspection of the financial institution.

(4) The power under this section to require a financial institution to produce documents includes power –

(a) if the documents are produced to take copies of them or extracts from them;

(b) if the documents are not produced, to require the financial institution which was required to produce them to state, to the best of its knowledge and belief, where they are.

29. **REGULATIONS**

(1) The Minister may, after consultation with the Authority, make Regulations -

(a) prescribing anything which may be or is to be prescribed under this Act;

(b) directing and controlling the calling in and demonetization of currency notes and coins issued under this Act; and

(c) regulating any aspect of the supervision and inspection of any financial institution operating in or from within Bermuda.
(d) prescribing limitations, restrictions or conditions on any financial institution respecting
the provision of financial services or financial instruments or respecting financial
dealings;\textsuperscript{1298}

(e) regulating the issue of financial instruments by any financial institution or by a
resident;\textsuperscript{1299}

(ha) regulating mergers, reconstructions, acquisitions, disposals and amalgamations of and by
financial institutions;\textsuperscript{1300}

(i) providing for the ownership and management of any financial institutions and their
subsidiary companies;\textsuperscript{1301}

(n) generally for the better carrying into effect of the purposes and provisions of this Act.\textsuperscript{1302}
THIRD SCHEDULE - (SECTION 20A) - ANY INSTITUTION

Any person registered under section 4 or 10 of the Insurance Act 1978
The Bermuda Stock Exchange
The Bermuda Commodities Exchange
The Bermuda Commodities Exchange Clearing House
Collective Investment Scheme
Credit Union
Investment funds as defined in Section 2 of the Investment Funds Act 2006
An investment provider licensed under the Investment Business Act 2003
Fund Administrators as defined in Section 2 of the Investment Funds Act 2006
Money Service Business
Undertaking licensed under the Trusts (Regulation of Trust Business) Act 2001
Undertaking licensed under the Corporate Service Provider Business Act 2012

(Selected Provisions)

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<td>(1) application for a licence to carry on a money service business pursuant to regulation 7(1)(a) of the Money Service Business Regulations 2007</td>
<td>$5,150</td>
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<tr>
<td>(2) annual fee pursuant to regulation 7(1)(b) of the Money Service Business Regulations 2007</td>
<td>$5,150</td>
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<th>CORPORATE SERVICE PROVIDER BUSINESS ACT 2012—</th>
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<tr>
<td>(1) Applying for a license under section 10</td>
<td>$206</td>
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<td>(2) Inspection of a register pursuant to section 14</td>
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<td>(3) Annual fee for granting a license under section 13 is $21 per entity the licensed undertaking was serving in the year ending 31 December of the preceding year.</td>
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<th>INVESTMENT FUNDS ACT 2006</th>
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<td>(1) Application fee authorisation (all funds)</td>
<td>$855</td>
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<tr>
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BERMUDA MONETARY AUTHORITY ACT 1969 (SELECT PROVISIONS)

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<th>Description</th>
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<tr>
<td>3</td>
<td>Annual fee - standard fund</td>
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<td>Annual fee - administered fund</td>
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<td>5</td>
<td>Annual fee - institutional fund</td>
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<td>Application fee – exempted funds</td>
<td>$567</td>
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<td>7</td>
<td>Annual fee – exempted funds</td>
<td>$680</td>
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<td>8</td>
<td>Initial filing fee pursuant to section 17(1)(ba) in relation to a Class A Exempt Fund</td>
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<td>9</td>
<td>Application fee pursuant to section 17(1)(bb) in relation to a Class B Exempt Fund</td>
<td>$1030</td>
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<td>10</td>
<td>Annual fee pursuant to section 17(1)(c) in relation to a Class A Exempt Fund</td>
<td>$1,545</td>
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<td>11</td>
<td>Annual fee pursuant to section 17(1)(c) in relation to a Class B Exempt Fund</td>
<td>$1,030</td>
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<td>12</td>
<td>Application fee - fund administrator licence</td>
<td>$8,518</td>
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<td>13</td>
<td>Annual fee – (fund administrator)</td>
<td>$9,373</td>
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<tr>
<td>14</td>
<td>Transaction fee - all section 25 changes and notifications and section 6 notifications</td>
<td>$258</td>
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1. Interpretation

2. Minister of Finance may make regulation for exchange control

[Date of Assent 30th June, 1972]
[Operative Date 30th June, 1972]

1. INTERPRETATION

In this Act, unless the context otherwise requires -

“authorised dealer” means, in relation to gold or any foreign currency, a person for the time being authorised by or under the regulations to act for the purposes of the regulations in relation to gold or, as the case may be, that foreign currency;

“bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

“beneficial owner” shall have such meaning as may be prescribed;  

“Bermuda area currency” means any currency of Bermuda and any prescribed currency;

“blocked account” means an account opened as a blocked account at an office or branch in Bermuda in favour of any person by a banker authorised by the Minister to open blocked accounts;

“certificate of title to securities” means any document of title whereby a person recognizes the title of another to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

“Controller of Foreign Exchange” means such officer of the Bermuda Monetary Authority as constituted by the Bermuda Monetary Authority Act 1969 as the Bermuda Monetary Authority shall, with the approval of the Minister, designate Controller of Foreign Exchange;

“foreign currency” includes any currency, other than Bermuda currency or any prescribed currency, and any notes of a class which are or have at any time been legal tender in any territory outside Bermuda, and any reference to foreign currency includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank;

“gold” means gold coins or gold bullion;
“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

“policy of assurance” means any policy securing the payment of a capital sum or annuity on the occurrence of a specified event which is certain to happen and includes -

(a) any policy by which the payment of money is assured on death (except death by accident only) or on the happening of any contingency dependent on human life; and

(b) any policy securing the payment of an immediate annuity,

and the reference in this definition to the occurrence of a specified event which is certain to happen shall include the occurrence, which is certain to happen, of one of specified events none of which by itself is certain to happen;

“prescribed” means prescribed by regulations under section 2.

“securities” means shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and shares in an oil royalty;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“unit” means, in relation to a unit trust scheme, a right or interest (whether described as a unit, as a sub-unit or otherwise) which may be acquired under the scheme.

2. MINISTER OF FINANCE MAY MAKE REGULATIONS FOR EXCHANGE CONTROL

(1) The Minister may make regulations providing for all or any of the following matters -

(a) controlling dealings in gold and foreign currency;

(b) requiring the surrender to authorised dealers of gold and foreign currency;

(c) controlling payments to or for the credit of persons resident outside Bermuda and the placing of sums to the credit of such persons, including sums required to be paid by any judgment or order of any court or by any award;

(d) controlling the issue and transfer of securities to or to the nominees of persons resident outside Bermuda, and other dealings in or with or in relation to securities or capital monies payable thereon;

(e) controlling the issue of bearer certificates and coupons;

(f) controlling the importation and exportation of gold, currency notes, bills, certificates of title to securities and other documents and of any article;

(g) controlling payment for goods exported from Bermuda;

(h) imposing obligations on persons entitled to receive any foreign currency or a payment in any foreign currency and on persons entitled to sell or procure the sale of goods;

(i) controlling the transfer of policies of assurance and annuities;
(j) controlling the settlement of property on persons resident outside Bermuda;
(k) imposing duties on persons in relation to the acts of foreign companies;
(l) requiring monies to be paid to blocked accounts only;
(m) implying conditions in contracts;
(n) empowering the Controller of Foreign Exchange to give directions or notices for the purpose of the due administration and enforcement of the regulations;
(na) respecting the power of the Controller of Foreign Exchange to obtain information from any person to which this Act applies including, but not limited to, information relating to beneficial owners;
(nb) prescribing civil penalties, the procedure for the imposition thereof and for appeals;
(nc) providing for savings and transitional matters;
(o) the declarations to be made on any occasion, the persons by whom such declarations shall be made and the manner in which the same shall be verified;
(p) prescribing anything which is to be or may be prescribed;
(q) any other matter connected with exchange controls; and
(r) generally for the better carrying out of the purposes of this Act.

(2) Regulations made under this section may provide -

(a) that a contravention or breach thereof shall be an offence and for the punishment of persons convicted of any such offence, so, however, that, save as provided in paragraph (b) -

(i) the punishment so provided on summary conviction shall not exceed a fine of one thousand dollars or imprisonment for three months or both such fine and imprisonment;
(ii) the punishment so provided on conviction on indictment shall not exceed a fine of five thousand dollars or imprisonment for two years or both such fine and imprisonment;

(b) in the case of an offence which is concerned with any currency, security, payment, gold, goods or other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required to do so by or under the regulations, for the punishment of persons convicted of such offence, whether summarily or on indictment by a larger fine not exceeding three times the amount or value of the currency, security, payment, gold, goods or property;

(ba) that a contravention or breach thereof shall be subject to the imposition of such civil penalty not exceeding $25,000 as may be prescribed; and

c) for the forfeiture of any currency, security, gold, goods or other property with which an offence under the regulations is concerned.
(3) Regulations made under this section may also provide that the obligations and prohibitions imposed thereby shall apply to all persons, notwithstanding that they are not in Bermuda and are not Commonwealth citizens.

(4) The negative resolution procedure shall apply to regulations made under this section.
1. Citation
2. Interpretation
3. Meaning of resident
4. Manner in which discretion to be exercised
12. Issue of securities
13. Transfer of securities registered in Bermuda or in Bermuda
14. Transfer of securities outside Bermuda
15. Transfer of coupons
16. Issue of bearer certificates and coupons
17. Substitution of securities and certificates outside Bermuda
18. Payment of capital moneys outside Bermuda
19. Duties of persons keeping registers
20. Additional provisions as to nominee holdings
21. Provisions as to deposit of certain securities
22. Special provisions as to dealing in certain securities
23. Validation of certain transfers
24. Application of Part IV to secondary securities
25. Interpretation of Part IV
42. Evidence of permission, authority, etc
42A. Revoked

[Operative Date 1 May, 1973]

PART I - INTRODUCTORY

1. **CITATION**
These Regulations may be cited as the Exchange Control Regulations 1973.

2. **INTERPRETATION**
In these Regulations, unless the context otherwise requires, -

   “authorised” in relation to an authorised dealer or authorised depository means authorised as a dealer or depository, as the case may be, by the Minister by notice in the Gazette;

   “Bermuda exchange control area” means the territories specified in the First Schedule;
“Bermudian status” means Bermudian status for the purposes of the Bermuda Immigration and Protection Act 1956;

“Controller” means the Controller of Foreign Exchange;

“coupon” means a coupon representing dividends or interest on a security;

“exempted company” has the meaning given in section 2(1) of the Companies Act 1981;

“official exchange rate” means the official exchange rate as fixed under Regulation 6(4);

“permit company” means a company holding a permit which either -

(a) is valid within section 133(2) of the Companies Act 1981; or

(b) has been issued under section 134 of that Act;

“resident” and “non-resident” shall be construed in accordance with Regulation 3;

“secondary security” has the meaning ascribed to it by Regulation 24.

3. MEANING OF RESIDENT

(1) Subject to paragraphs (2) to (10) for the purposes of these Regulations any person -

(a) ordinarily resident in Bermuda or, in the case of a natural person, the spouse or dependent of such person; or

(b) employed in Bermuda or, in the case of a natural person, the spouse or dependant of such person; or

(c) who has a place of business in Bermuda,

shall be deemed to be resident in Bermuda.

(2) Subject to anything to the contrary in this regulation, an exempted company shall be deemed not to be resident in Bermuda.

(2B) Subject to anything to the contrary in this regulation, every employee of an exempted company who does not possess Bermudian status shall be deemed not to be resident in Bermuda.

(2C) If eighty per cent or more of the total issued share capital of an exempted company is beneficially owned by Bermudians (as defined in section 113 of the Companies Act 1981), the company shall be deemed to be resident in Bermuda, paragraph (2) notwithstanding.

(2D) If eighty per cent or more of the total issued share capital of an exempted company is beneficially owned by Bermudians (as defined in section 113 of the Companies Act 1981), every employee of the company working for the company in Bermuda shall be deemed to be resident in Bermuda, anything in paragraph (2B) notwithstanding.

(2E) Where an exempted company is licensed under section 129A of the Companies Act 1981 to carry on a business or activity in Bermuda, then the Controller may direct -

(a) that the company shall, as respects the company’s carrying on of that business or activity in Bermuda, be treated as if it were resident in Bermuda, paragraph (2) notwithstanding;

(b) that any employee of the company engaging in that business of activity for the company in Bermuda shall, as respects his engagement in that business or activity in Bermuda, be treated as if he were resident in Bermuda, anything in paragraph (2B) notwithstanding;
and, upon such direction being given, these Regulations shall have effect accordingly in relation to the company or that employee, as the case may be.\textsuperscript{1342}

(3) Subject to paragraph (3A), a permit company shall be deemed not to be resident in Bermuda.\textsuperscript{1343}

(3A) Where a permit company engages in or carries on a trade or business in Bermuda in circumstances such that, if the company were an exempted company, it would require to be licensed under section 129A of the Companies Act 1981 for the purpose, then the Controller may direct that the company shall, as respects the company’s engaging in or carrying on that trade or business in Bermuda, be treated as if the company were resident in Bermuda, paragraph (3) notwithstanding; and, upon such a direction being given, these Regulations shall have effect accordingly in relation to the company.\textsuperscript{1344}

(4) An exempted partnership as defined in the Exempted Partnerships Act 1958 and employees thereof who do not possess Bermudian status, shall be deemed not to be resident in Bermuda unless one half or more of the partners are resident in Bermuda.

(5) The trustees of a trust or settlement established or made by a person who is not resident in Bermuda shall, in their capacity as such, be deemed not to be resident in Bermuda and the moneys comprised in any such trust or settlement shall be deemed to be held to the account of a person who is not resident in Bermuda.

(6) A person -

(a) in the naval, military or air force of any territory other than Bermuda while resident in Bermuda as a member of such force together with any dependent of his, including his wife, who is not employed in Bermuda other than by such forces;

(b) entitled to privileges under the Consular Relations Act 1971, unless he is a person to whom Article 71 of the Vienna Convention on Consular Relations applies,

shall be deemed not to be resident in Bermuda.

(7) The personal representative of a deceased person shall be treated as resident in the territory where the deceased person was resident at the time of his death so far as relates to any matters in which the personal representative is concerned solely in his capacity as such.

(8) A person who has not Bermudian status for the purposes of the Bermuda Immigration and Protection Act 1956, who has retired to Bermuda after employment elsewhere and whose income is derived from sources outside Bermuda, together with any dependant of his, including his wife, who is not employed in Bermuda, shall be deemed not to be resident in Bermuda.

(9) Any bank account or property held by or at the direction of a resident of Bermuda and by or at the direction of another person shall be deemed to be held by a resident of Bermuda.

(10) The Controller may direct that any person or category of persons shall notwithstanding anything to the contrary in this Regulation, be deemed to be resident in Bermuda, or shall not be deemed to be resident in Bermuda, as the case may be.

4. MANNER IN WHICH DISCRETION TO BE EXERCISED

Where a discretion is, under these Regulations, vested in the Minister or the Controller, such discretion shall be exercised with the object of protecting the foreign exchange reserves of Bermuda, promoting its economic welfare or ensuring compliance with these Regulations or other provision of law.
12. ISSUE OF SECURITIES

(1) Except with the permission of the Controller, no person shall in Bermuda issue any security or, whether in Bermuda or elsewhere, issue any security which is registered or to be registered in Bermuda, unless -

(a) neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee is resident outside the Bermuda exchange control area; and

(b) evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued and that of the person, if any, for whom he is to be a nominee.

(2) For the purposes of paragraph (1), the subscription of the memorandum of association of a company to be formed in Bermuda under a private Act or under the Companies Act 1981 or other law for the time being in force relating to the formation of companies in Bermuda, by a person resident outside the Bermuda exchange control area, or by a nominee for another person so resident, shall be deemed to be the issue of a security if such subscription has the effect of making such person a member of or shareholder in the company upon the registration of filing of the memorandum.

(3) For the purposes of paragraph (1), where -

(a) an amalgamated company is registered under section 108(1) of the Companies Act 1981 or other enactment relating to the registration of amalgamated companies in Bermuda; and

(b) one or more of the amalgamating companies was a body incorporated outside of Bermuda,

the registration shall be deemed to be an issue of a security to each person who held a security in that incorporated body and each such person will, as a result of such registration, be deemed to hold a security in the amalgamated company.

(4) For the purposes of paragraph (1), the registration of the memorandum of continuance under section 132C(4) of the Companies Act 1981 or other enactment relating to registering the continuation of companies in Bermuda shall be deemed to be the issue of a security to each person who will, as a result of such registration, hold a security in the continued company.

13. TRANSFER OF SECURITIES REGISTERED IN BERMUDA OR IN BERMUDA

(1) A security -

(a) registered in Bermuda may be transferred;

(b) not registered in Bermuda may be transferred in Bermuda,

in the following circumstances -

(i) if neither the transferor nor the person, if any, for whom he is a nominee is resident outside the Bermuda exchange control area; and

(ii) if neither the transferee nor the person, if any, for whom he is to be a nominee is resident outside the Bermuda exchange control area,

but shall not otherwise be transferred without the permission of the Controller.
Neither the transferee nor his agent shall commit an offence by reason only that the requirements or paragraph (1)(i) were not fulfilled unless the transferee or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

Neither the transferor nor his agent shall commit an offence by reason only that the requirements of paragraph (1)(ii) were not fulfilled unless the transferor or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

**13A. TRANSFER OF BENEFICIAL OWNERSHIP IN PERMIT COMPANIES**

Subject to paragraph (2), where due to a transfer of beneficial ownership a beneficial owner reaches the beneficial ownership threshold of 10% or more of a permit company, such permit company shall, within 14 days of such change, inform the Controller.

Paragraph (1) shall not apply where—

(a) a permit company has appointed a principal representative under section 136A of the Companies Act 1981 and such principal representative is licensed as a corporate service provider under section 11 of the Corporate Service Provider Business Act 2012; or

(b) the shares of a permit company or the shares of any holding company of the permit company are listed on a recognized stock exchange.

In this regulation “recognized stock exchange” means any stock exchange that is a member of the World Federation of Exchanges.

**14. TRANSFER OF SECURITIES OUTSIDE BERMUDA**

Except with the permission of the Controller, a security not registered in Bermuda shall not be transferred outside Bermuda if either the transferor or the transferee, or the person, if any, for whom the transferor or transferee is or is to be nominee, is resident in Bermuda.

**15. TRANSFER OF COUPONS**

Except with the permission of the Controller no coupon shall be transferred -

(a) in Bermuda, if either the transferee or the person, if any, for whom he is to be nominee is resident outside the Bermuda exchange control area; or

(b) outside Bermuda, if either the transferor or transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Bermuda.

**16. ISSUE OF BEARER CERTIFICATES AND COUPONS**

Except with the permission of the Controller, no person shall, in Bermuda, and no person resident in Bermuda shall outside Bermuda issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.

**17. SUBSTITUTION OF SECURITIES AND CERTIFICATES OUTSIDE BERMUDA**

Except with the permission of the Controller no person in or resident in Bermuda shall do any act with intent to secure -

(a) that a security which is -

(i) registered in Bermuda; or

(ii) transferable by means of a bearer certificate in Bermuda,
becomes, or is replaced by, a security registered outside Bermuda or a security transferable by means of a bearer certificate outside Bermuda; or

(b) that a certificate of title to any other security, is issued outside Bermuda in substitution for or in addition to a certificate of title thereto which is in, or is or has been lost or destroyed in Bermuda.

18. PAYMENT OF CAPITAL MONEYS OUTSIDE BERMUDA

Except with the permission of the Controller no person resident in Bermuda shall do any act with intent to secure that capital moneys payable on a security registered in Bermuda are paid outside Bermuda, or that, where the certificate of title to a security is in Bermuda, capital moneys payable on the security are paid outside Bermuda without production of the certificate to the person making the payment.

19. DUTIES OF PERSONS KEEPING REGISTERS

Except with the permission of the Controller, no person concerned with the keeping of any register in Bermuda shall-

(a) enter in the register, in respect of any security, an address outside the Bermuda exchange control area, except for the purpose of any transaction for which the permission of the Controller has been granted with the knowledge that it involves the entry of that address; or

(b) do any act in relation to the register which recognizes or gives effect to any act appearing to him to have been done with such intent as is mentioned in Regulations 17 and 18, whether done by a person in or resident in Bermuda or not.

20. ADDITIONAL PROVISIONS AS TO NOMINEE HOLDINGS

(1) Where -

(a) the holder of a security is a nominee and the person for whom he is a nominee is resident outside the Bermuda exchange control area; or

(b) the holder of a security is not a nominee and is resident outside the Bermuda exchange control area,

then, except with the permission of the Controller, no person resident in Bermuda shall do any act whereby the holder becomes his nominee in respect of the security.

(2) Except with the permission of the Controller, a person resident in Bermuda for whom the holder of a security is a nominee shall not do any act whereby-

(a) the holder, being a person resident outside the Bermuda exchange control area, holds the security otherwise than as his nominee; or

(b) the holder, not being a person resident outside the Bermuda exchange control area, holds the security as nominee for a person resident outside the Bermuda exchange control area.

(3) Where the holder of a security is a nominee, then, except with the permission of the Controller, neither he, if he is resident in Bermuda, nor any person resident in Bermuda through whose agency the exercise of all or any of the holder’s rights in respect of the security are controlled, shall -

(a) do any act whereby he recognizes or gives effect to the substitution of another person as the person from whom he directly receives his instructions unless both the person
previously instructing him and the person substituted for that person were, immediately before the substitution, resident in the Bermuda exchange control area and not elsewhere; or

(b) do any act whereby he ceases to be a person bound to give effect to the instructions of another person in relation to the security, unless the person who theretofore instructed him is resident in the Bermuda exchange control area and not elsewhere.

(4) Where the holder of a security is not a nominee and is resident in Bermuda, then, except with the permission of the Controller, he shall not do any act whereby he becomes the nominee of another person in respect of the security, unless that other person is resident in the Bermuda exchange control area and not elsewhere.

21. PROVISIONS AS TO DEPOSIT OF CERTAIN SECURITIES

(1) It shall be the duty of every person resident in Bermuda by whom or to whose order (whether directly or indirectly) a certificate of title to a security to which this Regulation applies, is held in or outside Bermuda shall cause such certificate of title to be kept at all times, except with the permission of the Controller, in the custody of an authorised depositary, upon such terms and conditions as the Controller may direct.

(2) Nothing in this Part shall prohibit the doing of anything for the purpose of complying with this Regulation.

(3) Except with the permission of the Controller, an authorised depositary shall not part with any certificate of title required under this Regulation to be in the custody of an authorised depositary;

Provided that this paragraph shall not prohibit an authorised depositary from parting with a certificate of title -

(a) to or to the order of another authorised depositary, where the person from whom the other authorised depositary is to receive instructions in relation thereto is to be the same person from whom he receives instructions;

(b) for the purpose of obtaining payment of capital moneys payable on the security, to the person entrusted with payment thereof.

(4) Where a certificate of title which under this Regulation should for the time being be in the custody of an authorised depositary is not in the custody of an authorised depositary, then, except with the permission of the Controller, no person shall in Bermuda, and not person resident in Bermuda shall outside Bermuda, buy, sell, transfer, or do anything which affects his rights or powers in relation to, the security.

(5) This Regulation shall apply to any security on which capital moneys, dividends or interest are payable in a foreign currency or as respects which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a foreign currency.

22. SPECIAL PROVISION AS TO DEALING IN CERTAIN SECURITIES

(1) Except with the permission of the Controller, no person shall, in Bermuda, and no person resident in Bermuda shall, outside Bermuda, transfer or do anything which affects his rights or powers in relation to, any security to which this Regulation applies.
(2) This Regulation shall apply to any security on which capital moneys, dividends or interest are payable in a foreign currency or in respect to which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a foreign currency.

23. VALIDATION OF CERTAIN TRANSFERS

(1) The title of any person to a security for which he has given value on a transfer thereof, and the title of all persons claiming through or under him, shall notwithstanding that the transfer, or any previous transfer, or the issue of the security, was by reason of the residence of any person concerned other than the first-mentioned person prohibited by the provisions of these Regulations relating to the transfer or issue of securities, be valid unless the first-mentioned person had notice of the facts by reason of which it was prohibited.

(2) Without prejudice to paragraph (1), the Controller may issue a certificate declaring in relation to a security that any acts done before the issue of the certificate purporting to effect the issue or transfer of the security, being acts which were prohibited by these Regulations, are to be, and are always to have been, as valid as if they had been done with the permission of the Controller, and such acts shall have effect accordingly.

(3) Nothing in this Regulation shall affect the liability of any person to prosecution for any offence against these Regulations.

24. APPLICATION OF PART IV TO SECONDARY SECURITIES

(1) This Part shall apply with such modifications (if any) as the Controller may, by order in the Gazette direct, in relation to any such document as is mentioned in paragraph (2), as if the document created, and were the certificate of title to a security (hereafter in these Regulations referred to as a “secondary security”).

(2) The documents referred to in paragraph (1) are any letter of allotment which may be renounced, any letter of rights, any warrant conferring an option to acquire a security, any deposit certificate in respect of securities, any letter of allotment which may not be renounced, any renounceable certificate, any scrip certificate, any rights coupon, any bond mandate and such other documents conferring, or containing evidence of, rights, as may be prescribed in the order.

25. INTERPRETATION OF PART IV

(1) In this Part -

“registered” includes inscribed;

“registered in Bermuda” and “registered outside Bermuda” mean respectively, registered in a register in, and registered in a register outside Bermuda;

“a register” includes any book, file or index in which securities are registered;

“holder” in relation to a security -

(a) transferable by means of a bearer certificate or in relation to a coupon, includes the person holding the certificate or coupon; and

(b) which is registered in the name of a deceased person, or of any person who, by reason of bankruptcy, unsoundness of mind or any other disability is incapable of transferring the security, means the personal representative, trustee in bankruptcy or other person entitled to transfer the security.
(2) For the purpose of any provision of this Part prohibiting the transfer of securities, a person shall be deemed to transfer a security if he executes any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

(3) References in this Part to the person holding a certificate of title or coupon shall be construed as reference to the person having physical custody of the certificate of title or coupon.

Provided that where the certificate of title or coupon is deposited with any person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person, that other person shall be deemed for the purposes of this provision to have the physical custody thereof.

(4) The holder of a security or coupon shall be deemed for the purposes of this Part to be a nominee in respect thereof, if, as respects the exercise of any rights in respect thereof, he is not entitled to exercise those rights except in accordance with instructions given by some other person.

(5) References in this Part to the person for whom the holder of a security or coupon is a nominee shall be construed as references to the person who is entitled to give instructions either directly or through the agency of one or more persons, as to the exercise of any rights in respect of the security or coupon and is not in so doing himself under a duty to comply with instructions given by some other person:

Provided that -

(a) a person shall not by reason only that he has a controlling interest in a body corporate be deemed for the purposes of paragraph (5) to be entitled to give instructions to that body corporate as to the exercise of rights in respect of any security or coupon of which it is the holder; and

(b) a person shall not be deemed to hold a security or coupon as a nominee by reason only that he holds it as trustee if he is entitled to transfer the security or coupon without permission from any other person.

25A COMPANY ENGAGING CORPORATE SERVICE PROVIDER

(1) Regulations 12, 13(1)(a), 14, 15, 17, 19, 20 and 23 shall not apply so as to require the permission of the Controller for the—

(a) issue or transfer of securities;

(b) transfer of coupons;

(c) substitution of securities; and

(d) nominee holdings of a security,

where the company that issued or is issuing the security or coupon is a company registered under the Companies Act 1981 and that has its registered office at the registered office of a corporate service provider licensed to hold an unlimited licence under the Corporate Service Provider Business Act 2012, at which the company is required to keep and maintain its register of members in accordance with section 65 of the Companies Act 1981.

(2) In circumstances where the company keeps its register of members at such other place in Bermuda in accordance with section 65 of the Companies Act 1981, regulations 12, 13(1)(a), 14, 15, 17, 19, 20 and 23 shall not apply so as to require the permission of the Controller for the—

(a) issue or transfer of securities;
(b) transfer of coupons;
(c) substitution of securities; and
(d) nominee holdings of a security,

if such place is at the registered office of a corporate service provider that holds an unlimited licence issued under the Corporate Service Provider Business Act 2012.

(3) Revoked 1360 1361

42. EVIDENCE OF PERMISSION, AUTHORITY, ETC.

A document stating that any permission, consent, authority or direction is given under any of the provisions of these Regulations by the Controller and purporting to be signed on his behalf, shall be prima facie evidence of the facts stated in the document.

42A. REVOKED1362 1363
3. INVESTMENT AND INVESTMENT BUSINESS

(1) In this Act-

(a) “investment” means an asset, right or interest specified in Part 1 of the First Schedule;

(b) “investment business” means engaging in one or more investment activities by way of business.

(2) An activity is an investment activity if –

(a) it is an activity of a kind specified in Part 2 of the First Schedule or one which falls within a class of activity so specified; and

(b) it is not excluded by Part 3 of the First Schedule.

(3) The Minister may, after consultation with the Authority, by order amend the First Schedule by adding new provisions, or by amending or deleting any of the investments specified in Part 1, or the investment activities specified in Part 2, or the excluded activities specified in Part 3, of the First Schedule.

(4) An order made under this section is subject to negative resolution procedure.

4. CARRYING ON INVESTMENT BUSINESS IN OR FROM BERMUDA

(1) For the purposes of this Act, a person carries on investment business in or from Bermuda if such person -

(a) carries on investment business from a place of business maintained by such person in Bermuda; or

(b) engages in an investment activity the doing of which constitutes the carrying on by such person of investment business in or from Bermuda under an order made under subsection (2).

(2) The Minister may, after consultation with the Authority, make an order specifying the circumstances in which a person who would otherwise not be regarded as carrying on investment business in or from Bermuda is to be regarded for the purpose of this section as carrying on investment business in or from Bermuda.

(3) An order under subsection (2) may be made so as to apply -

(a) generally to all investment activities;

(b) in relation to a specified category of investment activity; or

(c) in relation to a particular investment activity.
(4) An order made under subsection (2) may be made subject to conditions.

(5) For the purpose of this section a person engages in an investment activity if he enters or offers to enter into an agreement the making or performance of which by either party constitutes an investment activity.

(6) For the purpose of this section, a person maintains a place of business (“meaning of maintaining a place of business”) -

   (a) in the case of an individual who is a sole trader, if he carries on investment business from premises that he occupies for that purpose;

   (b) in any other case, if it carries on investment business from premises it occupies for that purpose, at which it employs staff and pays salaries and other expenses in connection with that business.

(7) The Minister may, after consultation with the Authority, make an order amending the meaning of maintaining a place of business for the purposes of this section.

(8) An order made under subsection (7) may include saving and transitional provisions.

(9) An order made under this section is subject to negative resolution procedure.

PART III - REGULATION OF INVESTMENT PROVIDERS

CHAPTER 1: REQUIREMENTS FOR A LICENCE AND EXEMPTIONS

LICENSING

12. RESTRICTION ON CARRYING ON INVESTMENT BUSINESS

(1) A person shall not carry on, or purport to carry on, investment business in or from Bermuda unless that person is for the time being licensed or is exempted by or under an order made under section 13.

(2) A person who contravenes this section is guilty of an offence and liable -

   (a) on summary conviction, to a fine of $100,000 or to imprisonment for a term of two years or to both;

   (b) on conviction on indictment, to a fine of $250,000 or to imprisonment for a term of five years or to both.

(3) In proceedings brought against a person for an offence under subsection (1), it shall be a defence for such person to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

13. EXEMPTION FROM REQUIREMENT FOR A LICENCE

(1) The Minister acting on the advice of the Authority may by order (“an exemption order”) provide for -

   (a) a specified person;

   (b) persons falling within a specified class;

   to be exempt from the requirement to hold a licence.
(2) An exemption order may provide for an exemption to have effect -
   (a) in respect of all investment activities;
   (b) in respect of one or more specified investment activities;
   (c) only in specified circumstances;
   (d) subject to conditions.

(3) “Specified” means specified by the exemption order.

(4) An order made under this section is subject to negative resolution procedure.

(5) Where in pursuance of this section, a person is exempted from the requirement to hold a licence but subject to a condition, and the condition is contravened, the exemption shall not have effect, and accordingly proceedings may be brought for an offence under section 12.

14. EXEMPTED PERSONS MAY APPLY TO BE LICENSED

(1) A person falling within a specified class of persons exempted by or under an order made under section 13 (“exempted person”), may make application under section 16 for a licence.

(2) Upon the issue of a licence to an exempted person -
   (a) such person shall cease to be an exempted person; and
   (b) the provisions of this Act shall apply to him as a licensed person.

15. AGREEMENTS MADE BY OR THROUGH UNLICENSED PERSONS

(1) An agreement to which this section applies which is entered into by a person in the course of carrying on investment business in contravention of section 12 shall be enforceable by a party to the agreement against any other party to the agreement.

(2) This section applies to any agreement the making or performance of which by the person seeking to enforce it constitutes an investment activity.

17. Grant and refusal of application for a licence

(1) Subject to this section, the Authority may on an application duly made in accordance with section 16, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant.

(3) A licence issued under this section may be subject to such limitations on the scope of the investment activity or the manner of operating the investment business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.

(4) The Authority may, on application made by an investment provider, vary or remove any limitation imposed on the scope of its licence.

(5) If a firm is licensed -
   (a) it is licensed to carry on the investment business concerned in the name of the firm; and
   (b) its licensing is not affected by any change in its membership.
INVESTMENT BUSINESS ACT 2003 (SELECT PROVISIONS)

(6) If a licensed firm is dissolved, its licence continues to have effect in relation to any firm which succeeds to the business of the dissolved firm.

(7) For the purposes of this section, a firm is to be regarded as succeeding to the business of another firm only if -

(a) the members of the resulting firm are substantially the same as those of the former firm; and

(b) succession is to the whole or substantially the whole of the business of the former firm.

(8) The Minister acting on the advice of the Authority may by order amend the Second Schedule by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(9) An order made under subsection (8) shall be subject to negative resolution procedure.

27. UNSOLICITED CALLS

(1) Except so far as permitted by regulations made by the Minister, no person shall in the course of or in consequence of an unsolicited call made on an individual by way of business enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter into such an agreement.

(2) Subject to subsection (4) -

(a) any investment agreement which is entered into in the course of or in consequence of the unsolicited call in contravention of subsection (1) shall not be enforceable against the person on whom the call was made; and

(b) that person shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.

(3) The compensation recoverable under subsection (2) shall be such as the parties may agree or as the court may, on the application of either party, determine.

(4) The court may allow an agreement to which subsection (2) applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied -

(a) that the person on whom the call was made was not influenced, or not influenced to any material extent, by anything said or done in the course of or in consequence of the call;

(b) without prejudice to paragraph (a), that the person on whom the call was made entered into the agreement -

(i) following discussions between the parties of such a nature and over such a period that his entering into the agreement can fairly be regarded as a consequence of those discussions rather than the call; and

(ii) was aware of the nature of the agreement and any risks involved in entering into it; or

(c) that the call was not made by -

(i) the person seeking to enforce the agreement or to retain the money or property or a person acting on his behalf; or
(ii) a person who has received or is to receive, any commission or other inducement in respect of the agreement from a person mentioned in sub-paragraph (i).

(5) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.

(6) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in this section shall be construed as references to its value at the time of its transfer under the agreement.

(7) In this section -
“unsolicited call” means a personal visit or oral communication made without express invitation;
“investment agreement” means an agreement within the meaning of section 15(2).

CHAPTER 1A - ALTERNATIVE INVESTMENT FUND MANAGERS

19A Interpretation

In this chapter—
“AIF” means an alternative investment fund within the meaning given in section 19B;
“AIFM” means an alternative investment fund manager within the meaning given in section 19C, which is licensed under sections 17 and 19E;
“AIFM rules” means AIFM rules made by the Authority under section 19H;
“external AIFM” has the meaning given in section 19C(3)(a);
“internal AIFM” has the meaning given in section 19C(3)(b);
“managing an AIF” is to be interpreted in accordance with section 19C(2), and cognate expressions are to be interpreted accordingly.

19B Meaning of “AIF”

(1) “AIF” means a collective investment undertaking that raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.

(2) An AIF may be open-ended or closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.

19C Meanings of “AIFM”, “managing an AIF”, “external AIFM” and “internal AIFM”

(1) “AIFM” means a person, the ordinary business of which is managing one or more AIFs.

(2) “Managing an AIF” means performing at least risk management or portfolio management for the AIF.

(3) The AIFM of an AIF may be either—
(a) another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF (“external AIFM”); or
(b) where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself (“internal AIFM”).

19D Application of this Chapter

This Chapter applies to a person—
(a) who carries on the investment activity of managing investments;
(b) whose ordinary business is managing AIFs; and
(c) who qualifies for exemption under section 13.

LICENSING FOR AIFMS

19E Application by AIFMs for licence

(1) A person to whom section 19D applies may apply to the Authority under section 16 for an investment business licence to which this Chapter applies.

(2) Without prejudice to sections 16 and 17, the Authority must not grant a licence to an applicant for a licence under subsection (1) unless it is satisfied that—
(a) the applicant is a manager of AIFs;
(b) the applicant would be the only manager of each AIF it manages;
(c) the applicant has provided the Authority with such information as may be prescribed in the AIFM rules;
(d) the applicant meets the prerequisites for taking up activities as an AIFM as may be prescribed in the AIFM rules.

19F Licensed AIFMs to comply with requirement to manage

(1) An external AIFM must ensure compliance by every AIF that it manages, or by another entity on the AIF’s behalf, with the provisions of this Act or AIFM rules that are applicable to it.

(2) If an external AIFM is unable to ensure compliance by an AIF it manages, or by another entity on the AIF’s behalf, with a provision of this Act and AIFM rules to which the AIF is responsible, the AIFM must immediately inform the Authority about the non-compliance.

(3) The Authority must require the AIFM to take steps to remedy the noncompliance as referred to in subsection (2) by an AIF it manages, or by another entity on the AIF’s behalf.

(4) If the non-compliance persists despite the steps mentioned in subsection (3) being taken, the Authority must—
(a) require the AIFM to cease acting as manager of that AIF;
(b) require the AIFM to stop marketing the AIF; and
(c) immediately inform the competent authorities of the foreign countries or territories in which the AIF is marketed of its requirement.

(5) The Authority may use its powers under sections 20 and 21 (power to restrict and revoke a licence) to enforce the requirements mentioned in subsections (2) and (3), but this subsection does not limit the powers of the Authority.
MATERIAL CHANGES

19G Notice of material changes

(1) An AIFM must give the Authority notice in such manner as may be required by AIFM rules of any material change to the conditions for initial licensing referred to in subsection (6).

(2) Subsections (3) to (5) apply where an AIFM has notified the Authority under subsection (1) of any material change.

(3) If the Authority decides to exercise any power so as to prevent the implementation of, or impose restrictions in relation to, the proposed changes, it must inform the AIFM within 28 days of receiving the notice mentioned in subsection (1).

(4) The Authority may extend the period of 28 days referred to in subsection (3) by up to 30 days, if it considers this to be necessary because of the specific circumstances of the case, and after having notified the AIFM accordingly.

(5) If the Authority does not inform the AIFM of a decision under subsection (3) within the period of 28 days mentioned in subsection (3) or any extension thereof under subsection (4), the AIFM may implement the changes.

(6) In this section “conditions for initial licensing” means the requirements of section 16(3)(a)(ii),(iii) and (v), and the minimum criteria.

19H General rule making power

(1) The Authority may make such rules applying to AIFMs with respect to the carrying on by them of AIFM business, as appear to it to be necessary or expedient for the purpose of this Chapter.

(2) Without prejudice to the generality of subsection (1), such rules shall include provisions relating to—

(a) the application information for authorisation;

(b) requirements for initial capital and own funds;

(c) requirements for the operating condition of an AIFM including risk management, remuneration, conflicts of interest, liquidity management and investments;

(d) organisational requirements and systems of governance of an AIFM;

(e) requirements for carrying out valuation of assets and calculation of net asset values of AIFs managed by an AIFM;

(f) arrangements for depositaries and their liabilities;

(g) the preparation and content of annual reports on the AIFs an AIFM manages;

(h) requirements for AIFMs managing leveraged AIFs;

(i) the disclosures to be made to investors on AIFs that an AIFM manages or markets;

(j) the reporting obligations to the Authority and to other competent authorities;

(k) prerequisites for taking up activities as an AIFM;

(l) requirements for an AIFM where an AIF that it manages acquires control of companies; and
(m) requirements for disclosure and reporting by an AIFM regarding acquisitions by AIFs.

(3) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(4) The Authority may, in the rules made under this Chapter, require monetary amounts to be stipulated in foreign currencies.

**19I Transitional**

A person who, on or before the commencement of this Chapter, is licensed under section 17 of the Act by virtue of an application made under sections 14 and 16 of the Act, may apply to the Authority for a variation of their licence in accordance with section 17(4) of the Act.
FIRST SCHEDULE - INVESTMENTS AND INVESTMENT ACTIVITIES

PART 1 - INVESTMENTS

1. SHARES, ETC.
Shares and stock in the share capital of a company.

2. DEBENTURES, ETC.
Debentures, including debenture stock, loan stock, bonds, certificates of deposit and any other securities issued by a body corporate, government, public authority or other body whether or not constituting a charge on the assets of such body.

3. INSTRUMENTS GIVING ENTITLEMENT TO INVESTMENTS
Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1 or 2, except that an investment falling within this paragraph shall not be regarded as falling within paragraph 6, 7 or 9.

4. UNITS IN COLLECTIVE INVESTMENT SCHEMES
Any right to participate in an investment fund as defined in section 2 of the Investment Funds Act 2006.

5. CERTIFICATES REPRESENTING INVESTMENTS
Certificates or other instruments which confer contractual or property rights -
   (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
   (b) the transfer of which may be effected without requiring the consent of that person.

6. OPTIONS
Options to acquire or dispose of—
   (a) any investment falling within any other paragraph of this Part;
   (b) any currency;
   (c) palladium, platinum, gold or silver;
   (d) an option to acquire or dispose of any investment.

7. FUTURES
(1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, except that this paragraph does not apply if the contract is made for commercial and not investment purposes.
(2) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange recognised by the Authority, or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
(3) A contract not falling within subparagraph (2) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within 30 days.

8. INTERESTS IN A PARTNERSHIP

Instruments which confer an interest in a partnership.

9. CONTRACTS FOR DIFFERENCES

(1) Rights under -
   (a) a contract for differences; or
   (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in -
      (i) the value or price of property of any description; or
      (ii) an index or other factor designated for that purpose in the contract;

other than a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

(2) This paragraph does not apply to designated investment contracts within the meaning of section 57A(1) of the Insurance Act 1978.

10. LONG TERM BUSINESS

(1) Rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the Insurance Act 1978.

(2) This paragraph does not apply to rights under a contract of insurance if -
   (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
   (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract, or before that person attains a specified age, not exceeding 70 years;
   (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; or
   (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with the preceding paragraph.

(3) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract may constitute both long-term business and general business as defined in section 1 of the Insurance Act 1978, references in this paragraph to rights and benefits are references only to such rights and benefits as are attributable to the provisions of the contract relating to long-term business.

(4) This paragraph does not apply to rights under a reinsurance contract.

(5) Rights falling within this paragraph shall not be regarded as falling within paragraph 9.

11. RIGHTS AND INTERESTS IN INVESTMENTS

Rights to and interests in any investment falling within any of the preceding paragraphs of this Part.
PART 2 - INVESTMENT ACTIVITIES

1. DEALING IN INVESTMENTS

(1) Buying, selling, subscribing for, or underwriting, investments, or offering or agreeing to do so, either as principal or agent.

(2) A person does not carry on an activity of the kind specified in subparagraph (1) by accepting or transferring an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided.

(3) The reference in subparagraph (2) to a person accepting or transferring an instrument includes a reference to a person becoming a party to an instrument otherwise than as a debtor or a surety.

(4) Subparagraph (1) does not apply to -

(a) any dealings by a company in its own shares or share warrants or in its own debentures or debenture warrants;

(b) any dealings by a unit trust in its own units; and

(c) any dealings by a partnership in its own partnership interests.

(5) This paragraph applies to a transaction which is to be entered into by a person as principal or agent only if -

(a) he continuously holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or

(b) he continuously holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transactions relate; or

(c) he continuously solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that matter.

(6) In subparagraph (5) “members of the public” in relation to the person soliciting them (the “relevant person”), means any other person except -

(a) licensed persons or exempted persons;

(b) members of the same group as the relevant person;

(c) persons who are or propose to become, participators with the relevant person in a joint enterprise.

(7) Subparagraph (5) applies only if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 10 of Part 1 or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1.

2. ARRANGING DEALS IN INVESTMENTS

(1) Making or offering, or agreeing to make -
(a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, being arrangements which bring about or would bring about the transaction in question;

(b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

(2) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(3) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, or with a view to a person transferring, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.

(4) Arrangements do not fall within subparagraph (1)(b) by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(5) This paragraph does not apply to arrangements for the introduction of persons to another person if -

(a) the person to whom the introduction is made is a licensed or exempted person or is a person whose ordinary business involves him in engaging in an investment activity and who is not unlawfully carrying on investment business in Bermuda; and

(b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either -

(i) in relation to investments generally; or

(ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.

(6) The references in subparagraph (3) to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or surety.

3. MANAGING INVESTMENTS

Managing or offering, or agreeing to manage, assets belonging to another person where those assets consist of or include investments.

4. INVESTMENT ADVICE

Giving or offering, or agreeing to give, to persons in their capacity as clients or potential clients, advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

5. SAFEGUARDING AND ADMINISTERING INVESTMENTS

(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where-

(a) those assets consist of or include investments falling within any of paragraphs 1 to 8 of Part 1; or
(b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.

(2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within subparagraphs (1) (a) and (b).

(3) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements -

(a) under which another person (the “primary custodian”), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself; and

(b) which are operated by the primary custodian in the course of carrying on in Bermuda investment business falling within this paragraph.

(4) None of the following activities constitutes the administration of assets -

(a) providing information as to the number of units or the value of any assets safeguarded;

(b) converting currency;

(c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.

(5) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered -

(a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or

(b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.

(6) This paragraph does not apply to arrangements for the introduction of persons to another person if -

(a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and

(b) the introduction is made with a view to the provision in Bermuda of a service falling within this paragraph or the making of arrangements operated in Bermuda for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

(7) For the purposes of subparagraph (6) the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.
(8) For the purpose subparagraphs (3) and (6), a person is permitted to provide a service falling within this paragraph if -

(a) he is a licensed person who may provide that service; or

(b) he is an exempted person as respects any investment business which consists of or includes that service.

PART 3 - EXCLUDED ACTIVITIES

1. GROUPS, FIRMS AND JOINT ENTERPRISES

(1) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as principal with another person if -

(a) they are members of the same group or firm; or

(b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purpose of, or in connection with, that enterprise.

(2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by a person as agent for another person in the circumstances mentioned in subparagraphs (1)(a) and (b) if where the investment falls within any of paragraphs 1 to 10 of Part 1, or, so far as relevant to any of those paragraphs, paragraph 11 of Part 1, the agent does not -

(a) hold himself out (otherwise than to other members of the same group or firm or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or

(b) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 1 of Part 1 applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;

(3) Paragraph 2 of Part 2 does not apply to arrangements which a person makes or offers or agrees to make if-

(a) that person is a member of a group or firm and the arrangements are with a view to another member in the same group or firm entering into a transaction of the kind mentioned in that paragraph; or

(b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.

(4) Paragraph 3 of Part 2 does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if -

(a) they are members in the same group or firm; or

(b) they are, or propose to become, a participator in a joint enterprise and the investments are or are to be managed for the purposes of or in connection with, that enterprise.
(5) Paragraph 4 of Part 2 does not apply to advice given by a person to another person if -
   (a) they are members of the same group or firm; or
   (b) they are, or propose to become, participators in a joint enterprise and the advice is given
       for the purposes of or in connection with, that enterprise.

(6) Paragraph 5 of Part 2 does not apply to a service which a person provides or offers or agrees to
     provide or to arrangements which a person makes or offers or agrees to make for the provision of a
     service if -
     (a) that person is a member of the group or firm and the service is or is to be provided to a
         another member in the same group or firm and relates or will relate to assets which
         belong to that other member; or
     (b) that person is or proposes to become a participator in a joint enterprise and the assets to
         which the service relates or will relate are or are to be held on behalf of another person
         who is or proposes to become a participator in the enterprise and are or are to be held for
         the purposes of or in connection with that enterprise.

(7) The definition in paragraph 1(6) of Part 2 shall apply also for the purposes of subparagraph (2).

2. SALE OF GOODS AND SUPPLY OF SERVICES

(1) This paragraph concerns certain activities carried on for the purposes of or in connection with the
     sale of goods or supply of services by a supplier to a customer.

(2) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the
     supplier as principal if it is to be entered into by him with the customer for the purposes of or in
     connection with the sale of goods or supply of services or a related sale or supply.

(3) Paragraph 1 of Part 2 does not apply to any transaction which is or is to be entered into by the
     supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection
     with the sale of goods or supply of services or a related sale or supply, and where the investment falls
     within any of paragraphs 1 to 3 of Part 1 or so far as relevant to any of those paragraphs, paragraph 11 of Part 1,
     the supplier does not -
     (a) hold himself out (otherwise than to the customer) as engaging in the business of buying
         investments with a view to selling them and those investments are or include
         investments of the kind to which the transaction relates; or
     (b) regularly solicit members of the public for the purpose of inducing them to enter as
         principals or agents into transactions to which paragraph 1 of Part 2 applies;

and the transaction is not or is not to be entered into as a result of his having solicited members of the
public in that manner.

In this subparagraph “members of the public” has the same meaning as in paragraph 1(6) of Part 2;

(4) Paragraph 2 of Part 2 does not apply to arrangements which the supplier makes with a view to
     the customer entering into a transaction for the purposes of or in connection with the sale of goods or
     supply of services or a related sale or supply.
(5) Paragraph 3 of Part 2 does not apply to the supplier by reason of his managing the investments of the customer if they are or are to be managed for the purposes of or in connection with, the sale of goods or supply of services or a related sale or supply.

(6) Paragraph 4 of Part 2 does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale of goods or supply of services or a related sale or supply.

(7) Where the supplier is a member of a group, subparagraphs (2) to (6) shall apply to any other member of the group as they apply to the supplier; and where the customer is a member of a group, references in those subparagraphs to the customer include references to any other member of the group.

(8) In this paragraph -

“supplier” means a person whose main business is to sell goods or supply services and not to carry on any activities of the kind specified in Part 2 and, where the supplier is a member of a group, also means any other members of that group;

“customer” means a person other than an individual, to whom a supplier sells goods or supplies services, and where the customer is a member of a group, also means any other member of that group;

“related sale or supply” means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the sale of goods or supply of services by a supplier to a customer.

3. EMPLOYEE SHARE SCHEMES

(1) A person (“C”), a member of the same group as C or a relevant trustee does not carry on an activity of the kind specified by paragraph 1 of Part 2 by entering as principal or agent into a transaction the purpose of which is to enable or facilitate -

(a) transactions in shares in, or debentures issued by, C between, or for the benefit of, any of the persons mentioned in subparagraph (2); or

(b) the holding of such shares or debentures by, or for the benefit of, such persons.

(2) The persons referred to in subparagraph (1) are -

(a) the bona fide employees or former employees of C or of another member of the same group as C;

(b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

(3) There is excluded from paragraph 2 of Part 2 arrangements made by C, a member of the same group as C or a relevant trustee if the arrangements in question are for, or with a view to, a transaction of the kind described in subparagraph (1).

(4) There is excluded from paragraph 5 of Part 2 any activity if the assets in question are, or are to be, safeguarded and administered by C, a member of the same group as C or a relevant trustee for the purpose of enabling or facilitating transactions of the kind described in subparagraph (1).

(6) In this paragraph -
(a) “shares” and “debentures” include -

(i) any investment of the kind specified by paragraph 1 or 2 of Part I;

(ii) any investment of the kind specified by paragraph 3 or 5 of Part I so far as relevant to paragraphs 1 and 2 of Part I; and

(iii) any investment of the kind specified by paragraph 11 of Part I so far as relevant to investments of the kind mentioned in (i) or (ii) above;

(b) “relevant trustee” means a person who, in pursuance of the arrangements made for the purpose mentioned in subparagraph (1), holds, as trustee, shares in or debentures issued by C.

4. SALE OF BODY CORPORATE

(1) Paragraphs 1 and 2 of Part 2 do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a body corporate other than a mutual fund company, and paragraph 4 of Part 2 does not apply to advice given in connection with the acquisition or disposal of such shares if either -

(a) the conditions set out in subparagraph (2) are met; or

(b) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

(2) The conditions mentioned in subparagraph (1)(a) are that -

(a) the shares consist of or include shares carrying 50 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body corporate;

(b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and

(c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a firm, a single individual or a group of connected individuals.

(3) In this paragraph -

“group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a director or senior executive of the body corporate and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is or is to be a director or senior executive of the body corporate.

“close relative” means a person’s spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

5. TRUSTEES AND PERSONAL REPRESENTATIVES

(1) Paragraph 1 of Part 2 does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if -
(a) the investment is, or as the case may be, is to be held by him as trustee or personal representative; and

(b) he does not hold himself out as providing a service of buying and selling investments;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(2) Paragraph 2 of Part 2 does not apply to anything done by a person as trustee or personal representative with a view to -

(a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 1 of Part 2; or

(b) a beneficiary under the trust, will or intestacy engaging in any such activity;

unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(3) Paragraph 3 of Part 2 does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(4) Paragraph 4 of Part 2 does not apply to advice is given by a person as trustee or personal representative to -

(a) a fellow trustee or personal representative for the purposes of the trust or estate; or

(b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate;

unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

(5) Paragraph 5 of Part 2 does not apply to anything done by a person as a trustee or personal representative unless-

(a) he holds himself out as providing a service falling within paragraph 5 of Part 2; or

(b) he is remunerated for providing such a service in addition to any remuneration he receives for discharging his duties as trustee or personal representative.

6. ADVICE GIVEN OR ARRANGEMENTS MADE IN COURSE OF LEGAL PROFESSION

(1) Paragraph 2 of Part 2 does not apply to arrangements-

(a) which are made in the course of the carrying on of the profession of a barrister and attorney; and

(b) the making of which may reasonably be regarded as a necessary part of other services provided in the course of carrying on that profession.

(2) Paragraph 4 of Part 2 does not apply to advice -

(a) which is given in the course of the carrying on of the profession of a barrister and attorney; and
(b) the giving of which may reasonably be regarded as a necessary part of other services given in the course of carrying on that profession.

(3) Paragraph 5 of Part 2 does not apply to the provision of a service or to arrangements made for the provision of a service where -

(a) the service is provided or the arrangements are made in the course of the carrying on of the profession of a barrister and attorney; and

(b) the provision of the service or the making of the arrangements may reasonably be regarded as a necessary part of other services provided in the course of carrying on that profession.

(4) Advice shall not be regarded as falling within sub-paragraph (1)(b), the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) and the provision of a service or the arranging for the provision of a service shall not be regarded as falling within sub-paragraph (3)(b) if the giving of the advice, the making of the arrangements or the provision, or the arranging for the provision, of the service is remunerated separately from the other advice or services.

7. ADVICE GIVEN IN NEWSPAPERS AND BROADCASTING SERVICES

Paragraph 4 of Part 2 does not apply to advice given -

(a) in a newspaper, journal, magazine or other periodical publication; or

(b) in any programme included, or made for inclusion, in any television broadcasting service or sound broadcasting service;

if the principal purpose of the publication taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

PART 4 - INTERPRETATION

1. For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or agents for it to be entered into by another person as principal or agent.

2. In this Schedule, a “joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than investment business) carried on by them; and where a participator is a member of a group each other member of the group shall also be regarded as a participator in the enterprise.
In exercise of the powers conferred upon him by section 13 of the Investment Business Act 2003, the Minister of Finance, acting on the advice of the Bermuda Monetary Authority, makes the following Order:-

1. **Citation**

This Order may be cited as the Investment Business (Exemptions) Order 2004.

2. **Interpretation**

In this Order -

“Act” means the Investment Business Act 2003;

“collective investment schemes” has the same meaning as in the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998 or any provision of law amending or replacing such Regulations, and includes collective investment schemes established or registered outside Bermuda;

“high income private investor” means an individual who has had a personal income in excess of $200,000 in each of the two years preceding the current year or has had a joint income with that person’s spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and “current year” means the year in which he purchases an investment;

“high net worth private investor” means an individual whose net worth or joint net worth with that person’s spouse in the year in which he purchases an investment exceeds $1,000,000; and “net worth” means the excess of total assets at fair market value over total liabilities;

“investment services” means investment activities undertaken in the course of carrying on investment business;

“market intermediary” means a person who engages or holds himself out as engaging in the business of dealing in investments as principal or agent on an investment exchange;

“sophisticated private investor” means -

(a) an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments; and

(b) who, in respect of each investment transaction, deals in amounts of not less than $100,000.
3. **Exemption**

(1) Subject to the conditions expressed in relation to each of them, persons specified in the Schedule (being persons carrying on investment business in or from Bermuda) are exempt from the requirement to hold a licence under the Act.

(2) Every person who qualifies for exemption under paragraph 1 or 3 of the Schedule shall provide the Authority with a declaration in such form as the Authority may require, declaring that he is so qualified by virtue of the applicable paragraph of the Schedule.
INVESTMENT BUSINESS (EXEMPTIONS) ORDER 2004 (SELECT PROVISIONS)

SCHEDULE

1. Exempted Persons

Persons, other than market intermediaries, who provide investment services exclusively to one or more of the following classes of undertakings -

(a) high income private investors;
(b) high net worth private investors;
(c) sophisticated private investors;
(d) collective investment schemes approved by the Authority under the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998 or any provision of law amending or replacing such Regulations;
(e) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
(f) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
(g) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
(h) partnerships, all of whose members fall within one or more of the subparagraphs of this paragraph, except subparagraph (d);
(i) trusts, all of whose beneficiaries fall within one or more of the subparagraphs of this paragraph, except subparagraph (d).

2. Collective investment schemes.

3. Persons who provide investment services to not more than twenty persons at any time, and do not provide investment services to, or solicit investment business from, the public.

4. (1) Persons who are registered under the Insurance Act 1978 to carry on insurance business (within the meaning of section 1(1) of that Act).

   (2) An exemption under this paragraph applies only to persons who provide investment services in connection with the insurance business for which those persons are registered under that Act.

5. (1) Persons registered under the Insurance Act 1978 as insurance managers, brokers, agents, salesmen, or members of an association of underwriters (within the meaning of section 1 of that Act) recognised by the Authority.

   (2) An exemption under this paragraph applies only to persons who provide investment services in connection with the business for which they are registered under that Act.

7. The Bermuda Monetary Authority.
8. Public Authorities established in Bermuda.
WHEREAS it is expedient to make new provisions for the regulation of investment funds; to make provision for regulating fund administrators; and for connected matters:

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**PART I - PRELIMINARY**

1. Short title and commencement

This Act may be cited as the Investment Funds Act 2006 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

**INTERPRETATION**

2. Interpretation

(1) In this Act —

“auditor” means —

(a) a person entitled to practise as a public accountant in Bermuda;

(b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or

(c) a person recognized by the Authority as an auditor;

“Authority” means the Bermuda Monetary Authority;

“authorised” means authorised under this Act;

“chief executive” means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the company;

“constitution” in relation to –

(a) a unit trust fund, means its trust deed or other instrument establishing the trust;

(b) a mutual fund company, means its memorandum of association and bye-laws;

(c) a partnership fund, means its partnership agreement;

(d) a limited liability company fund or LLC fund, means its LLC agreement;
“controller” has the meaning given in section 2A; 1368

“custodian” means the person entrusted with the safekeeping of the fund property and includes the trustee of a unit trust fund and the persons mentioned in section 18(1);”

“fund administrator” has the meaning given in subsection (2); and “administrator” has a corresponding meaning;

“fund prospectus” means particulars of a fund prepared in accordance with fund prospectus rules and “prospectus” has a corresponding meaning;

“fund prospectus rules” means fund prospectus rules made under section 38;

“fund rules” means rules made under section 37;

“investment fund” has the meaning given in section 3; and “fund” has a corresponding meaning;

“investment manager” means a person acting on behalf of a fund who manages its investments under the terms of a management agreement;

“limited liability company fund” or “LLC fund” means a fund under which the property is held on behalf of the members of a limited liability company formed under the Limited Liability Company Act 2016; 1369

“manager” has the meaning assigned to it in section 2 of the Limited Liability Company Act 2016; 1370

“minimum criteria” means the minimum criteria for licensing set out in the Schedule;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act1371;

“mutual fund company” means a fund under which the property is held for the participants by a mutual fund company within the meaning of section 156A of the Companies Act 1981;

“officer”, in relation to an undertaking, includes a director, secretary or senior executive of the undertaking by whatever name called, and any manager; 1372 1373

“prime broker” means a person who provides services under a prime brokerage agreement which may include any one or more of the following— 1374

(a) custody of assets or arranging safe keeping of assets;

(b) clearing services and financing;

(c) capital introduction;

(d) margin financing;

(e) stock lending;

(f) entering into repurchase or reverse repurchase transactions;

(g) consolidated reporting and other operational support;

“operator”, in relation to –

(a) a unit trust fund, means the trustee;
INVESTMENT FUNDS ACT 2006 (SELECT PROVISIONS)

(b) a mutual fund company, means that company; 1375
(c) a partnership fund, means the general partner; and 1376
(d) an LLC fund, means that limited liability company; 1377

“parent undertaking” has the meaning given in section 5 of the Investment Business Act 2003; 1378
“participant” in relation to a fund has the meaning given by section 3(2);
“participate” in relation to a fund means become a participant in the fund;
“partnership fund” means a fund under which the property is held on behalf of participating partners of a partnership registered under the Limited Partnership Act 1883;
“register” has the meaning given in section 20;
“registrar” means the person appointed to establish and maintain the register;
“senior executive” means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the company –
   (a) exercises managerial functions; or
   (b) is responsible for maintaining accounts or other records of the undertaking.
“service provider” means a fund’s auditor, custodian, fund administrator, investment manager or registrar, and includes any person to whom a service provider has delegated part or all of his functions;
“shareholder controller” has the meaning given in section 2A(4); 1380
“Tribunal” means a Tribunal constituted in accordance with section 56;
“trustee” in relation to a unit trust fund, means the person holding the trust property on trust for the participants;
“units” means the rights or interests (however described) of the participants in a fund;
“unit trust fund” means a fund under which the property is held on trust for the participants.

(2) In this Act, “fund administrator” means a person who provides any one or more of the following services to a fund –
   (a) applying the subscription monies received by a fund in accordance with its constitution and its prospectus;
   (b) processing the issue, conversion and redemption of units of a fund;
   (c) applying the income of a fund in accordance with its constitution and its prospectus;
   (d) calculating the net asset value of the units, and their issue, conversion and redemption price;
   (e) maintaining the accounts of a fund;
   (f) distributing to the participants of a fund all dividends or other distributions which may from time to time be declared and paid by it on units in a fund.
INVESTMENT FUNDS ACT 2006 (SELECT PROVISIONS)

\section*{2A Meaning of “controller” and “associate” \(1381\)}

(1) In this Act, “controller” shall be construed in accordance with this section.

(2) “Controller” in relation to an undertaking, means—
   (a) in the case of an undertaking which is a company, a managing director of the company, or of its parent undertaking;
   (b) in the case of an undertaking which is a firm—
      (i) if a partnership, the managing partner;
      (ii) if an unincorporated association, a member of the firm;
   (c) in the case of an undertaking which is neither a company nor a firm, a sole proprietor;
   (d) a chief executive of the undertaking or of its parent undertaking;
   (e) a person who satisfies the requirements of this paragraph; and
   (f) a person in accordance with whose directions or instructions the directors of the undertaking or of its parent undertaking or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.

(3) A person satisfies the requirements of subsection (2)(e) in relation to an undertaking if, either alone or with any associate or associates—
   (a) he holds 10\% or more of the shares in the undertaking which is a company or its parent undertaking;
   (b) he is entitled to exercise or control the exercise of 10\% or more of the voting power in the undertaking or in the parent undertaking; or
   (c) he is able to exercise a significant influence over the management of the undertaking or the parent undertaking by virtue of the voting power in the undertaking or the parent undertaking.

(4) A person who is a controller of an undertaking by virtue of subsection (2)(e) is in this Act referred to as a "shareholder controller" of the undertaking; and in this Act—
   (a) "ten per cent shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is not less than ten; and
   (b) "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

(5) In subsection (4), "the relevant paragraph" in relation to a shareholder controller means whichever one of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(6) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—
   (a) if that person is an individual —
      (i) the spouse, child, step-child or parent of that person;
      (ii) the trustees of any settlement under which that person has a life interest in possession;
      (iii) an undertaking of which that person is a director;
(iv) a person who is an employee or partner of that person;

(b) if that person is an undertaking which is a company or a firm—

(i) a director of that undertaking;

(ii) a subsidiary undertaking;

(iii) a director of a subsidiary of that undertaking;

(c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(7) For the purpose of subsection (6), "settlement" includes any disposition or arrangement under which property is held in trust.

PART II - INVESTMENT FUNDS

3. Investment fund

(1) In this Act, “investment fund” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that—

(a) the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and

(b) the participants are entitled to have their units redeemed in accordance with the fund’s constitution and prospectus at a price determined in accordance with such constitution and prospectus.

(3) The arrangements must also have one or both of the following characteristics—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the fund.

(4) The Minister acting on the advice of the Authority, may by order, subject to negative resolution procedure provide that arrangements do not amount to an investment fund—

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

4. Unit trust funds: segregated accounts

(1) This section applies to a unit trust fund which is permitted under the terms of its constitution to operate segregated accounts.

(2) In this section, “segregated account” means a separate and distinct account or sub-trust (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations
linked to such account) of a unit trust fund, relating to an identified or identifiable pool of assets and liabilities of such unit trust fund which are segregated or distinguished from other assets and liabilities of the unit trust fund.

(3) Notwithstanding any enactment or rule of law to the contrary, but subject to this section, the constitution of a unit trust fund to which this section applies may make provision for any of the following matters.

(4) The trustee of a unit trust fund which operates segregated accounts shall hold the assets of each segregated account for the benefit of the participants of such segregated account exclusively.

(5) Any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account.

(6) Where a liability arises from a transaction or matter relating to, or is otherwise imposed or attributable to, a particular segregated account, that liability shall –

(a) extend only to the assets linked to that segregated account; and

(b) not extend to the assets linked to any other segregated account.

(7) Any assets of the unit trust fund not readily identifiable as belonging to any particular segregated account shall be allocated by the trustee between all of the segregated accounts on the basis of the respective net asset values of each segregated account or, subject to the terms of the unit trust fund’s constitution, on such other basis as the trustee may in its absolute discretion determine.

PROHIBITION ON UNAUTHORISED FUNDS

5. Prohibition on unauthorised funds

(1) This section applies to the following funds –

(a) a unit trust fund;

(b) a mutual fund company;¹³⁸²

(c) a partnership fund; and¹³⁸³

(d) an LLC fund.¹³⁸⁴

(2) Subject to sections 6A and 8A¹³⁸⁵, no person shall operate a fund to which this section applies or purport to operate such a fund, in or from Bermuda, unless –

(a) the fund has been authorised under section 13; or

(b) the fund is exempted from authorisation under sections 6A and 8A¹³⁸⁶.

(3) It shall be an offence for a person to operate a fund in contravention of subsection (2).

(4) A person guilty of an offence under subsection (3) is liable –

(a) on summary conviction to a fine of $50,000 or to imprisonment for 2 years or to both, and

(b) on conviction on indictment to a fine of $200,000 or imprisonment for 5 years or to both.

(5) In proceedings for an offence under this section, it is a defence for the accused to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.
6. **Excluded Funds**

(1) Section 5 shall not apply to investment funds that are private funds.

(2) For the purposes of subsection (1) a fund is a private fund if the number of participants does not exceed 20 persons and if the fund does not promote itself by communicating an invitation or inducement to the public generally.

(3) An operator of a private fund falling within this section shall serve on the Authority a notice in writing of the fact that the private fund qualifies for exclusion under this section.

(4) Such notice shall be served as soon as practicable after the establishment of the private fund.

6A. **“Class A Exempt Fund: qualification”**

(1) A fund that satisfies the requirements of subsection (2) is designated as a Class A Exempt Fund and is exempt from the requirement for authorisation.

(2) The requirements referred to under subsection (1) are that—

(a) the fund is open only to qualified participants;

(b) the operator of the fund has appointed as an investment manager for the fund a person who—

(i) is licensed under the Investment Business Act 2003;

(ii) is authorised or licensed by a foreign regulator recognised by the Authority; or

(iii) for the purposes of this Act is carrying on business in or from Bermuda or in a jurisdiction recognised by the Authority, being a person who—

(A) has gross assets under management of an amount that is not less than one hundred million dollars; or

(B) is a member of an investment management group that has consolidated gross assets under management of an amount that is not less than $100 million;

(c) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;

(d) the operator of the fund has appointed the following persons (‘service providers’) to provide services to the fund—

(i) a fund administrator;

(ii) a registrar;

(iii) an auditor; and

(iv) a custodian or prime broker; and

(e) the financial statements of the fund are prepared in accordance with any one of the following standards—

(i) International Financial Reporting Standards (‘IFRS’);
(ii) Generally Accepted Accounting Principles ("GAAP") in Bermuda, Canada, the United Kingdom or the United States of America; or

(iii) any such other GAAP as the Authority may recognise.

(3) In this section—

“investment management group” means a group that carries on the business of managing investments within the meaning of paragraph 3 of Part 2 of the First Schedule to the Investment Business Act 2003;

“qualified participants” has the meaning given in sections 9(2) and 9(3)

6B. “Class A Exempt Fund: procedure for exemption”

(1) The operator of a Class A Exempt Fund must, on or before the date of commencement of the fund’s business, certify to the Authority, in such form as the Authority may direct, that the requirements for exemption specified in section 6A(2) are satisfied.

(2) The operator must also certify to the Authority annually on or before 30th June in such form as the Authority may direct that the fund satisfies the requirements for exemption specified in section 6A(2) and will continue to satisfy them.

(3) The operator of a Class A Exempt Fund must—

(a) at the time of filing the certificate required by subsection (1) also file with the Authority a copy of the fund’s prospectus;

(b) at the time of filing the annual certificate required by subsection (2), also file with the Authority—

(i) a copy of the fund’s audited financial statements for the preceding year; and

(ii) a statement of any material changes to the fund’s prospectus.

EXEMPTED FUNDS

7. Class B Exempt Fund: qualification

(1) The Authority may exempt from the requirements of authorisation a fund designated as a Class B Exempt Fund that satisfies the requirements of subsection (2).

(2) The requirements referred to under subsection (1) are that—

(a) the fund is only open to qualified participants;

(b) the operator of the fund has appointed for the fund an officer, trustee or representative resident in Bermuda who has authority to access the books and records of the fund;

(c) the operator of the fund has appointed the following persons ("service providers") to provide services to the fund—

(i) an investment manager;

(ii) a fund administrator;

(iii) a registrar;

(iv) an auditor; and
(v) a custodian or prime broker,

being persons who, in the Authority’s view, are fit and proper to perform the respective functions of their office; and

(d) the financial statements of the fund are prepared in accordance with any one of the following standards—

(i) International Financial Reporting Standards ("IFRS");

(ii) Generally Accepted Accounting Principles ("GAAP") in Bermuda, Canada, the United Kingdom or the United States of America; or

(iii) any such other GAAP as the Authority may recognise.

(3) In this section “qualified participants” has the meaning given in sections 9(2) and 9(3).

[Transitional and savings section of the Investment Funds Amendment Act 2013(2013:37)

13. Transitional and savings 1390

(1) Notwithstanding the repeal of section 7 of the principal Act ("the repealed provisions") by this Act, every fund that on the date of commencement of this Act qualified for exemption under the repealed provisions ("pre-repeal exempt funds") shall continue to be exempt in accordance with the repealed provisions and shall be subject to such repealed provisions which shall continue to apply to it.

(2) Subsection (1) shall cease to have effect on the third anniversary of commencement of this Act.

(3) On such anniversary, a pre-repeal exempt fund shall cease to qualify for exemption unless it otherwise satisfies the requirements for a Class A or Class B Exempt Fund under sections 6A and 7 respectively of the principal Act.

Date of Assent: 3 October 2003; Operative Date: 3 October 2013]

8. Class B Exempt Fund: procedure for exemption 1391

(1) The operator of a fund that qualifies for exemption as a Class B Exempt Fund may apply to the Authority for exemption.

(2) An application must be in such form as the Authority may direct and be accompanied by a copy of the fund’s prospectus.

8A. Class B Exempt Fund: grant of exemption 1392

(1) The Authority may grant an application for exemption made under section 8 if it is satisfied that the fund meets the requirements for exemption specified in section 7(2).

(2) The Authority must notify the applicant in writing of its decision within ten days from date of the application.

(3) In considering an application for exemption, the Authority may serve notice on the applicant requiring him to provide it with such information and documents as it requires for the purpose.
(4) Where the Authority has requested information or documents pursuant to a notice under subsection (3), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2).

(5) If the Authority fails to notify the applicant of its decision within the time specified in subsection (2), as increased by subsection (4) where notice has been served under subsection (3), the Authority shall be considered to have granted the exemption.

(6) The operator of a Class B Exempt Fund must certify to the Authority annually on or before 30th June in such form as the Authority may direct that the fund satisfies the requirements for exemption under section 7(2) and will continue to satisfy them.

(7) The operator of a Class B Exempt Fund must, at the time of filing the certificate required by subsection (6), also file with the Authority—
   (a) a statement of any material changes to the fund’s prospectus;
   (b) a copy of its audited financial statements for the preceding year; and
   (c) a schedule of any changes made to its directors and service providers.

(8) The operator of a Class B Exempt Fund shall not appoint a person to act as a director or service provider of the fund unless it applies to the Authority in writing seeking the Authority’s approval to the proposed appointment.

(9) Where the Authority is not satisfied that a director or service provider of a Class B Exempt Fund is, in the Authority’s view, a fit and proper person to perform the functions of his office, the Authority must within 14 days of receipt of the application for approval inform the applicant in writing of its objection to the appointment; otherwise the Authority must notify the applicant of its decision.

(10) Where the Authority fails to give the notice required by subsection (9) within the prescribed time, the Authority shall be considered as having no objection to the application for appointment of the service provider, as the case may be.

(11) The Authority may, on the application of the operator of a Class B Exempt Fund, waive any requirement of section 7(2), if it is satisfied that appropriate arrangements are in place to safeguard the interests of investors in the fund.

9. Criteria for exemption

(1) [REPEALED]

(1A) [REPEALED]

(1B) [REPEALED]

(2) In sections 6A(2) and 7(2) “qualified participants” means –
   (a) high income private investors;
   (b) high net worth private investors;
   (c) sophisticated private investors;
   (d) bodies corporate, each of which has total assets of not less than five million dollars, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
(e) unincorporated associations, partnerships or trusts, each of which has total assets of not less than five million dollars, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;

(f) bodies corporate, all of whose shareholders fall within one or more of the subparagraphs of this subsection;

(g) partnerships, all of whose members fall within one or more of the paragraphs of this subsection;

(h) trusts, all of whose beneficiaries fall within one or more of the paragraphs of this subsection;

(i) limited liability companies (LLCs), all of whose members fall within one or more of the paragraphs of this subsection.

(3) In sections 6A(2) and 7(2)

“high income private investor” means an individual who has had a personal income in excess of $200,000 in each of the two years preceding the current year or has had a joint income with that person’s spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; and “current year” means the year in which he purchases an investment;

“high net worth private investor” means an individual whose net worth or joint net worth with that person’s spouse in the year in which he purchases an investment exceeds $1,000,000; and “net worth” means the excess of total assets at fair market value over total liabilities;

“group” has the meaning given in section 2 of the Investment Business Act 2003;

“sophisticated private investor” means an individual who has such knowledge of, and experience in, financial and business matters as would enable him to properly evaluate the merits and risks of a prospective purchase of investments.

9A. Exempt fund: notice of disqualifying event

(1) The operator of an exempt fund of any class must give notice in writing to the Authority of the occurrence of any default (“a disqualifying event”) of a requirement under section 6A(2) or 7(2).

(2) Such notice must be given within 14 days of the operator becoming aware of the occurrence of the disqualifying event.

(3) In addition to the notice under subsection (2), the operator must, within 45 days of becoming aware of the occurrence of a disqualifying event, give notice in writing to the Authority specifying the particular circumstances leading to the disqualifying event and of the manner and time within which the operator intends to rectify the default.

(4) The Authority may give such directions to the operator of the fund as it considers appropriate to safeguard the interests of investors in the fund, and may direct that the fund ceases to qualify as an exempt fund of the class for which it has been made exempt.

(5) An operator who fails to notify the Authority as required by subsection (2) or (3) is liable to a default fine of $5000 and a further fine of $500 for every day that the fund is in default.
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(6) An operator who fails to comply with a direction given by the Authority under subsection (4) is liable to a civil penalty of an amount not exceeding $100,000.

(7) The Authority may recover as a civil debt owing to it any unpaid fine imposed under subsection (5) or (6) in a court of competent jurisdiction.

10. Exempted fund may apply to be authorised

(1) An investment fund exempted under section 7 (“exempted fund”), may make application under section 12 for authorisation.

(2) Where pursuant to such application, the Authority grants the application for authorisation, then from the date of such authorisation –
   (a) such fund shall cease to be an exempted fund; and
   (b) the provisions of this Act shall apply to the fund as an authorised fund.

AUTHORISATION

11. Classes of funds

(1) The Authority may authorise funds in the following classes –
   (a) institutional fund;
   (b) administered fund;
   (c) specified jurisdiction fund;
   (d) standard fund.

(2) A fund qualifies for classification as an institutional fund if –
   (a) pursuant to its constitution and prospectus –
      (i) it is only open to qualified participants; or
      (ii) it requires each participant to invest a minimum amount of $100,000 in the fund; and
   (b) it has an officer, trustee or representative resident in Bermuda who is a person who has access to the books and records of the investment fund.

(3) In this section “qualified participants” has the meaning given in section 9(2).

(4) A fund qualifies for classification as an administered fund if it is a fund whose administrator is licensed under Part III of this Act and –
   (a) pursuant to its constitution and prospectus it requires participants to invest a minimum amount of $50,000 in the fund; or
   (b) it is listed on a stock exchange recognized by the Authority for the purposes of this section.

(5) A fund qualifies for classification as a specified jurisdiction fund—
   (a) if the Minister by Order recognizes—
      (i) the jurisdiction, outside Bermuda, in which the fund operates; and
(ii) a particular law, or particular set of laws, of such jurisdiction as applicable to such fund; and

(b) if the fund satisfies the requirements set out in the fund rules made by the Authority relating to that class of fund and that jurisdiction.

(6) An Order made under subsection (5) is subject to the negative resolution procedure.

(7) A fund qualifies for classification as a standard fund if it does not fall within any other class of fund.

(8) The Minister acting on the advice of the Authority may, by order subject to negative resolution procedure, amend the qualifications for any class of fund, and may add additional classes of funds.

12. Applications for authorisation

(1) An application for the authorisation of a fund must be made to the Authority by the operator or proposed operator of the fund.

(2) The application –

(a) must be made in such manner as the Authority may direct;

(b) must state the corporate name and registered or principal office of each service provider of the fund;

(c) must be accompanied with a certificate signed by the operator to the effect that the fund complies, or will on authorisation comply, with section 14;

(d) must contain or be accompanied with such information as the Authority may reasonably require for the purpose of determining the application; and

(e) must be accompanied by an application fee.

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The Authority may require an applicant to present information which it is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

(5) Different directions may be given, and different requirements imposed, in relation to different applications.

(6) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application, but in any such case no application fee shall be refunded to the applicant.

13. Authorisation

(1) If, on an application under section 12 in respect of a fund, the Authority is satisfied that the fund complies with the requirements of section 14, the Authority may grant the application for the fund to be authorised in the appropriate class.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so.

(3) The applicant may withdraw its application, by giving the Authority written notice, at any time before the Authority determines it.
(4) An operator may apply to the Authority for a change of classification of an authorised fund.

(5) Section 12 (Applications for authorisation) applies to an application under subsection (4) as it applies to an application for authorisation.

(6) If the Authority is satisfied that the fund meets the qualifications of the class for which it is applying and is otherwise satisfied that the fund complies with the general requirements of authorisation set out in section 14, the Authority may reclassify the fund.

14. **Requirements for authorisation**

(1) The requirements referred to in section 13(1) are as follows —

   (a) the fund shall prepare annual financial statements which will be audited;

   (b) the fund has appointed, or will on authorisation appoint, an investment manager, an auditor and a fund administrator;

   (c) the fund property has been or will on authorisation be entrusted to a custodian;

   (d) the person appointed as custodian of the fund must —

      (i) if incorporated in Bermuda, be licensed under the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 or the Investment Business Act 2003;

      (ii) if incorporated elsewhere, be subject to regulatory supervision equivalent to that imposed by or under the Acts referred to in subparagraph (i); and

      (iii) be independent of the operator and —

         (A) in the case of a mutual fund company, of the persons appointed as directors of the company;

         (B) in the case of a partnership fund, of the partners;

         (C) in the case of an LLC fund, of the managers;

   (e) the operator of the fund, its officers and its proposed service providers are fit and proper persons to act as such;

   (f) in relation to the operator and service providers, the combination of their experience and expertise is such as is appropriate for the purposes of the fund; and

   (g) the fund complies, or will on authorisation, comply with the requirements of fund rules and fund prospectus rules.

(2) The person appointed as auditor of the fund must be independent of the operator of the fund and its service providers.

(3) The constitution of a fund must include provisions for the following —

   (a) the rights and restrictions attaching to the units;

   (b) the terms for valuation of assets and liabilities;

   (c) the manner of calculation of the net asset value of each unit and the issue price and redemption price of units;

   (d) the terms upon which units are issued;
(e) the terms upon which units may be transferred or converted, if applicable;
(f) the terms upon which units may be redeemed and the circumstances in which redemptions may be suspended; and
(g) the investment restrictions or borrowing limitations, if any.

(4) The Authority may on the application of the operator of a fund disapply the requirement that the custodian must –
(a) be independent of the operator of a fund;
(b) in the case of a mutual fund company, be independent of the directors or any one or more of them;¹⁴¹²
(c) in the case of a partnership fund, be independent of the partners, or any one or more of them, or¹⁴¹³
(d) in the case of an LLC fund, be independent of the managers, or any one or more of them, ¹⁴¹⁴

in any particular case where the Authority determines that it is appropriate to do so;

(5) The Authority may on the application of the operator of a fund disapply the requirement that the financial statements of a fund shall be audited in any particular year, where the Authority considers it appropriate to do so.

15. Authority may exempt from requirement for fund property to be entrusted to a custodian

The Authority may, where satisfied that appropriate alternative arrangements are in place for safeguarding fund property, exempt a fund in any particular case from the requirement of section 14(1)(c) that the fund property be entrusted to a custodian.

16. Register of authorisations and exemptions

The Authority shall establish and maintain in such manner as it thinks fit a register containing, in respect of each authorisation and exemption granted under this Act, such particulars as it may determine; and the register may be published in such manner as the Authority thinks fit.

FEES

17. FEES

(1) The operator of a fund shall pay to the Authority –
(a) on the making of an application for authorisation;
(aa) on the giving of notice of a proposal for which an approval is required under section 25(2)¹⁴¹⁵;
(b) on the making of an application for a change of classification;¹⁴¹⁶
(ba) on the initial filing of the certificate of exemption in accordance with section 6B, in relation to a Class A Exempt Fund;¹⁴¹⁷
(bb) on the making of an application for exemption under section 8, in relation to a Class B Exempt Fund; and¹⁴¹⁸
such fees as may be prescribed under section 20B and the Fourth Schedule of the Bermuda Monetary Authority Act 1969; but no annual fee shall be payable in the calendar year in which an application fee shall have been paid.

(2) Different fees may be prescribed for different classes of authorisation.

(3) If an operator of a fund fails to pay the prescribed fee as provided in subsection (1), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(4) The Authority may recover any fee and any penalty fee as a civil debt owing to it in any court of competent jurisdiction.

CUSTODIANS

18. Custodian may entrust property to third party

(1) Nothing in this Part prevents a custodian from—
   (a) entrusting to a third party all or some of the property in its safekeeping; or
   (b) in a case falling within paragraph (a), authorising the third party to entrust all or some of that property to other specified persons.

(2) In every case where property is entrusted to third parties, the custodian shall give notice in writing of that fact together with particulars of such person to —
   (a) the operator of the authorised fund; and
   (b) the fund administrator of the authorised fund.

TITLE AND TRANSFER OF UNITS

19. The registrar

(1) Every authorised fund shall appoint a registrar.

(2) The registrar shall establish and maintain in Bermuda, in a legible form or in a form capable of being reproduced in a legible form a register of the participants in the authorised fund in accordance with the provisions of the following sections and fund rules.

(3) The registrar may also appoint such person as it considers fit to be a sub-registrar or branch registrar to carry out on its behalf any or all of its obligations.

(4) Where an appointment is made under subsection (3), the registrar shall remain responsible for the discharge of all the registrar’s duties in relation to the register under this Act and fund rules and shall be responsible for the acts and omissions of the appointed person.

(5) Where the registrar delegates any of its functions to a sub-registrar or branch registrar it shall give notice in writing to —
   (a) the operator of the authorised fund; and
   (b) the authorised fund administrator.
20. The register

(1) There shall be entered in the register –
   (a) the name and address of each participant;
   (b) the number of units (including fractions of a unit) of each type held by each such participant; and
   (c) the date on which the participant was registered in the register in respect of the units standing in his name;

but the registrar shall not be obliged to register more than four persons as the joint participants of any units.

(2) The registrar shall—
   (a) take all reasonable steps; and
   (b) exercise all due diligence,

to ensure that the information contained in the register is, at all times, accurate, complete and up to date.

(3) In pursuance of subsection (2), the registrar shall in particular take such steps as are necessary to obtain information concerning any new participant to enable the entry in the register to be made.

21. Application of sections 20, 22 to 24 to mutual fund companies

Sections 20, 22, 23 and 24 shall apply to the units of a mutual fund company without prejudice to sections 65 to 68 of the Companies Act 1981, and the register maintained under this Part in respect of such a company shall be treated as if it is the register of members for all purposes.

22. Identification procedures

Nothing in section 20 shall be construed as requiring the registrar to make or alter any entry in the register or any certificate or other document or accept any transfer or conversion in any case where he considers it necessary or appropriate to carry out or complete identification procedures in relation to the participant or another person pursuant to any statutory or regulatory obligation.

23. The register as evidence of title

(1) The register shall be conclusive evidence as to the persons respectively entitled to the units entered therein.

(2) No notice of any trust which may be entered in the register in respect of any unit shall be binding on the registrar.

24. Inspection of register and copies of entries

(1) Except where otherwise provided in a fund’s constitution or prospectus, the registrar shall make the register available in Bermuda for inspection by or on behalf of the participants free of charge at all times during ordinary office hours but the register may be closed at such times and for such periods (not exceeding 30 days in any one year) as the registrar may from time to time determine.

(2) The registrar shall supply a participant or his authorised representative at such reasonable charge, if any, as the registrar shall determine, with a copy in print of the entries on the register relating to that participant.
CHANGES TO INVESTMENT FUNDS

25. Notice of certain changes to be given to Authority

(1) Subject to this section, the operator of an authorised fund shall forthwith give written notice to the Authority of any proposal to –
   (a) make a material change in the authorised fund’s prospectus;
   (b) replace a service provider of the authorised fund;
   (c) in relation to an authorised unit trust fund, replace a trustee of the unit trust or appoint any additional trustee or decrease the number of trustees;
   (d) in relation to an authorised mutual fund company, replace a director of the company or appoint any additional director or decrease the number of directors in post;
   (e) in relation to an authorised partnership fund, replace a general partner of the fund;
   (f) in relation to an authorised mutual fund company, reconstruct or amalgamate the company;
   (g) wind up the affairs of the authorised fund; and
   (h) in relation to an LLC fund, replace a manager of the limited liability company or appoint any additional manager or decrease the number of managers in post.

(2) Subject to subsections (3) and (4), effect is not to be given to any proposal of which notice has been given under subsection (1) unless the Authority shall have first approved such proposal by notice in writing served on the operator.

(3) No approval is required to a proposal of which notice has been given under paragraph (d) of subsection (1).

(4) No approval is required to a proposal of which notice has been given under paragraphs (c), (e), (f) and (g) of subsection (1) if such proposal were given by the operator of an institutional fund or an administered fund.

(5) For the purpose of this section, a change is a material change if it would, if known, reasonably affect the mind of a prudent participant in deciding whether to participate or to continue to participate in the fund; and “materially” has a corresponding meaning.

(6) An operator of an authorised fund –
   (a) that fails to give notice as required by subsection (1),
   (b) that gives effect to a proposal in contravention of subsection (2),

is guilty of an offence and liable on summary conviction to a fine of $50,000.

REPORTS TO THE AUTHORITY

26. Reports to the Authority

(1) The operator of an authorised fund shall
(a) at such time or times or at such intervals or in respect of such period or periods as may be required, furnish the Authority with a report on such activities of the fund as the Authority may reasonably require for the performance of its functions under this Act;

(b) submit to the Authority within six months of its financial year end –

(i) a statement confirming that the fund has at all times during the preceding financial year been in compliance with the provisions of this Act, fund rules and prospectus rules applicable to it;

(ii) (in the event that the fund has not been in such compliance) a statement setting out particulars of the breach.

(2) Where a service provider becomes aware of any of the matters specified in subsection (3), the service provider shall—

(a) within 14 days of the occurrence of any specified matter notify the Authority of its occurrence and the circumstances applicable thereto; and

(b) make a report in writing of such event to the operator;

and that report shall be included in the authorised fund’s next annual report and next periodic report if such periodic report is to be distributed before the annual report.

(3) The specified matters are –

(a) that the assets of an authorised fund have not been invested materially in accordance with its prospectus; or

(b) that the general management of an authorised fund is not materially in accordance with the fund’s constitution.

(3) A service provider shall not be in breach of any duty to which it is subject as a service provider of an authorised fund under this section by reason of its making a report to the Authority in good faith of any reportable event or any information on any matter of which it becomes aware in its capacity as such service provider of that fund and which relates to the business or affairs of that fund.

(4) For the purposes of this section

“reportable event” means an event in relation to which a report is required under subsection (2);

“materially” has the meaning given in section 25(5).

(5) A service provider that –

(a) fails to give notice as required by subsection (2)(a); or

(b) fails to make a report as required by subsection (2)(b),

is guilty of an offence and is liable on summary conviction to a fine of $50,000.

**REVOCATION OF AUTHORISATION**

27. **Revocation of authorisation other than by consent**

The Authority may revoke the authorisation of an authorised fund, if it appears to the Authority that –

(a) one or more requirements for authorising the fund are no longer satisfied;

(b) the operator of the authorised fund or any of the authorised fund’s service providers –
(i) has contravened or is likely to contravene a requirement imposed on the operator or service provider by or under this Act; or

(ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or

(c) no investment activity has been carried on in relation to the authorised fund for the previous twelve months.

28. **Procedure on revocation of authorisation**

(1) If the Authority proposes to revoke an authorisation under section 27, it must give separate warning notices to the operator and service providers of the authorised fund.

(2) If the Authority decides to revoke an authorisation, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

29. **Request for revocation of authorisation**

(1) An authorisation may be revoked by the Authority at the request of the operator of the authorised fund concerned.

(2) If the Authority revokes an authorisation under subsection (1), it must give written notice of the revocation to the operator of the authorised fund.

(3) The Authority may refuse a request to revoke an authorisation under this section if it considers that the public interest requires that any matter concerning the fund should be investigated before a decision is taken as to whether authorisation should be revoked.

**POWERS OF INTERVENTION**

30. **Directions to an authorised fund**

(1) Where the Authority is satisfied that the matters specified in paragraph (a) or (b) of section 27 apply but the circumstances are not such as to justify revocation, the Authority may in relation to an authorised fund give directions under this section.

(2) The Authority may also give a direction under this section if it concludes that neither paragraph (a) or (b) of section 27 apply, but that it is desirable to give directions in order to protect the interests of participants or potential participants in such a fund.

(3) For the purposes of subsection (2), the Authority may take into account any matter relating to—

(a) the authorised fund and any of its service providers;

(b) any director or controller of any service provider;

(c) any operator of an authorised fund;

(d) any person exercising influence over any operator of an authorised fund, or any of its service providers by virtue of provisions contained in the authorised fund’s constitution; or

(e) any person employed by or associated, for the purposes of the business of the authorised fund, with the authorised fund, or any [of] its service providers.
(4) A direction under this section may—
   (a) require the operator of an authorised fund to cease communicating an invitation or
       inducement to the public to participate in the authorised fund; or
   (b) require the operator of an authorised fund to cease the issue, or redemption, or both, of
       units.

(5) The Authority may, on its own initiative or on the application of an operator revoke or vary a
direction given under this section if it appears to the Authority—
   (a) in the case of revocation, that it is no longer necessary for the direction to take effect or
       continue in force;
   (b) in the case of variation, that the direction should take effect or continue in force in a
       different form.

(6) It shall be an offence for a person to fail without reasonable excuse to comply with a direction
given under this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine of
$25,000.

31. Procedure on giving directions under section 30 and varying them on Authority’s own
initiative

(1) A direction takes effect—
   (a) immediately, if the notice given under subsection (3) states that that is the case;
   (b) on such date as may be specified in the notice;
   (c) if no date is specified in the notice, when the matter to which it relates is no longer open
to appeal.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the
Authority, having regard to the ground on which it is exercising its power under section 30, considers
that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 30, or gives such a direction with
immediate effect, it must give separate written notices to the operator of the fund and its service
providers.

(4) The notice must—
   (a) give details of the direction;
   (b) inform the person to whom it is given of when the direction takes effect;
   (c) state the Authority’s reasons for giving the direction and for its determination as to when
      the direction takes effect;
   (d) inform the person to whom it is given that it may make representations to the Authority
      within such period as may be specified in it (whether or not it has referred the matter to
      the Tribunal); and
   (e) inform the person of its right to refer the matter to the Tribunal.
(5) If the direction imposes a requirement under section 30(4)(b), the notice must state that the requirement has effect until—
   (a) a specified date; or
   (b) a further direction.

(6) The Authority may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
   (a) to give the direction in the way proposed, or
   (b) if it has been given, not to revoke the direction,

it must give separate written notices to the operator of the fund and its service providers.

(8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
   (a) not to give the direction in the way proposed,
   (b) to give the direction in a way other than that proposed, or
   (c) to revoke a direction which has effect,

it must give separate written notices to the operator of the fund and its service providers.

(9) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (4).

(11) This section applies to the variation of a direction on the Authority’s own initiative as it applies to the giving of a direction.

32. Procedure: refusal to revoke or vary direction

(1) If on an application under section 30(5) for a direction to be revoked or varied the Authority proposes—
   (a) to vary the direction otherwise than in accordance with the application, or
   (b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—
   (a) it must give the applicant a decision notice; and
   (b) the applicant may refer the matter to the Tribunal.

33. Procedure on revocation of direction and grant of request for variation

(1) If the Authority decides on its own initiative to revoke a direction under section 30 it must give separate written notices of its decision to the operator of the authorised fund and its service providers.

(2) If on an application made under section 30(5) for a direction to be revoked or varied, the Authority decides to revoke or vary it in accordance with the application, it must give the applicant written notice of its decision.
34. Warning notices

(1) A warning notice shall –
   (a) state the action which the Authority proposes to take;
   (b) be in writing; and
   (c) give reasons for the proposed action.

(2) The warning notice shall specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(3) The Authority may extend the period specified in the notice.

(4) The Authority shall then decide, within a reasonable period, whether to give the person concerned a decision notice.

35. Decision notices

(1) A decision notice shall –
   (a) be in writing;
   (b) give the Authority’s reasons for the decision; and
   (c) give an indication of any right to have the matter appealed to the Tribunal which is given by this Act.

36. Winding up on petition from the Authority

(1) The Authority may present a petition to the Supreme Court for the winding up of a fund which –
   (a) having been authorised under this Act has had its authorisation revoked; or
   (b) is operating, or has been operating, as an investment fund in contravention of any provision of this Act.

(2) On such a petition, the Supreme Court may wind up the fund if it is of the opinion that it is just and equitable that the fund be wound up.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a mutual fund company under this section.

(4) Part 13 (Dissolution) of the Limited Liability Company Act 2016 shall apply to the winding up of an LLC fund under this section.

37. Fund rules

(1) The Authority may make rules (“fund rules”) as to –
   (a) the constitution, management and operation of authorised funds;
   (b) the powers, duties, rights and liabilities of –
       (i) the operators of an authorised fund;
       (ii) any of its service providers;
(iii) the directors of an authorised mutual fund company;
(c) the rights of the participants in any such authorised fund; and
(d) the winding up of any authorised fund.

(2) Fund rules may, in particular, make provision—

(a) as to the issue and redemption of the units by an authorised fund;
(b) as to the expenses of an authorised fund and the means of meeting them;
(c) for the appointment, removal, powers and duties of a service provider of an authorised fund;
(d) requiring any of the service providers of an authorised fund to be resident, or have a place of business in Bermuda;
(e) for restricting or regulating the investment and borrowing powers exercisable in relation to an authorised fund;
(f) requiring the keeping of records whether in Bermuda or elsewhere, with respect to the transactions and financial position of an authorised fund and for the inspection of those records; and
(g) requiring the preparation of periodical reports with respect to the authorised fund and the provision of those reports to the participants and to the Authority.

(3) Fund rules may make different provisions for different classes of authorised funds and shall be published in such manner as the Authority may determine.

38. Fund prospectus rules

(1) The Authority may make prospectus rules (“fund prospectus rules”) requiring the operator of an authorised fund—

(a) to submit the fund prospectus to the Authority; and
(b) to publish the fund prospectus or make it available to the public on request.

(2) “Fund prospectus” means a prospectus containing particulars in such form, containing such information about the fund and complying with such requirements as are specified in fund prospectus rules.

(3) Fund prospectus rules may require the operator of an authorised fund to submit, and to publish or make available, a revised or further fund prospectus if there is a significant change affecting any matter—

(a) which is contained in a fund prospectus previously published or made available; and
(b) whose inclusion in the prospectus was required by the rules.

(4) Fund prospectus rules may require the operator of an authorised fund to submit, and to publish or make available, a revised fund prospectus if—

(a) a significant new matter arises; and
(b) the inclusion of information in respect of that matter would have been required in a previous prospectus if it had arisen when that prospectus was prepared.
(5) Fund prospectus rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any fund particulars, of compensation to any qualifying person who has suffered loss as a result of—
   (a) any untrue or misleading statement in the particulars; or
   (b) the omission from them of any matter required by the rules to be included.

(6) “Qualifying person” means a person who has become or agreed to become a participant in the fund.

(7) Fund prospectus rules do not affect any liability which any person may incur apart from the rules.

(8) Fund prospectus rules made under this section may make different provisions for different classes of funds and shall be published in such manner as the Authority may determine.

39. Disapplication of the Statutory Instruments Act 1977

Sections 6, 7 and 8 of The Statutory Instruments Act 1977 shall not apply to rules made under sections 37 and 38.

40. Modification or waiver of rules

(1) The Authority may, on the application or with the consent of any person to whom any fund rules or fund prospectus rules apply, direct that any of such rules—
   (a) are not to apply to him as respects a particular authorised fund; or
   (b) are to apply to him as respects a particular authorised fund with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the Authority may direct.

(3) The Authority may not give a direction unless it is satisfied that—
   (a) compliance with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
   (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(4) A direction may be given subject to conditions.

(5) The Authority may—
   (a) revoke a direction; or
   (b) vary it on the application, or with the consent, of the person to whom it relates.

(6) “Direction” means a direction under subsection (1).

73. OFFENCES BY COMPANIES

(1) Where an offence under this Act committed by a company or limited liability company1426 is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company or limited liability company1427, or any person who was purporting to act in any such capacity, he, as well as the company, or limited liability company1428 shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.
(2) Where the affairs of a company or limited liability company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the company or manager of the limited liability company.

76. **Transitionals**

(1) Notwithstanding the requirements for authorisation under Part II of this Act, every fund approved under the repealed provisions shall on the commencement of this Act be authorised and classified as follows –

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<th>Classification under repealed provisions</th>
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<td>Bermuda Institutional Scheme</td>
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(2) Where the approval of a fund for classification under the repealed provisions was subject to conditions imposed on its classification, such conditions shall continue to apply to the fund.

(3) The Authority shall enter particulars of such authorisation in the register established under section 16.

(4) Subject to this section, upon the registration of such authorisation, the provisions of this Act shall apply to such fund as it applies to funds authorised under section 13 pursuant to an application made under section 12.

(5) Every fund exempted by or under regulation 3A of the repealed provisions shall on the commencement of this Act be exempted under this Act, and the Authority shall enter particulars of such exemption in the register established under section 16.

(6) Upon the registration of such exemption, the provisions of this Act shall apply to such fund as if it applies to funds exempted under section 7 pursuant to an application made under section 8.

(7) The operator of a fund to which subsections (1) and (5) apply may, within a period of 6 months from the date of commencement of this Part, apply to the Authority for a change of classification.

(8) Sections 13(5) and (6) apply to an application under subsection (7) as they apply to an application under section 13(4).

(9) Where an application is made under subsection (7) no fee shall be payable under section 17.

(10) A company which, on the day of commencement of this Part, is carrying on fund administration business may continue to carry on such business without a licence under Part III of this Act –

(a) for a period not exceeding twelve months beginning with that date; and

(b) if within that period application is made for a licence, until that application is disposed of or withdrawn.
ENDNOTES

1. Companies Amendment Act 2014
2. Companies Amendment Act 1993
3. Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018
4. Companies Amendment (No. 2) Act 2011
5. Companies Amendment (No. 2) Act 2011
6. Companies Amendment (No. 2) Act 2011
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17. Proceeds of Crime Amendment Act 2016
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95  Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018
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101 Companies Amendment Act 2006
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103 Companies Amendment Act 2003
104 Repealed and replaced by section 2(a) of the Companies Amendment (No. 2) Act 2011
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108 Exempted Partnerships Act 1992
109 Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018
110 Companies Amendment Act 2014
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112 Companies Amendment Act 1993
113 Companies Amendment Act 1984
114 Amended by the Attorney General pursuant to the Computerization and Revision of Laws Act 1989
115 Companies Amendment Act 1994
116 Repealed and replaced by section 2(b) the Companies Amendment (No. 2) Act 2011
117 Inserted by section 2(b) the Companies Amendment (No. 2) Act 2011
118 Companies Amendment Act 1992
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120 Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018
121 Companies Amendment (No. 2) Act 1988
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126 Companies Amendment Act 2006 (this section to become operative at a later date, to be announced)
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128 Registrar of Companies (Compliance Measures) Act 2017
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[Note: The Government unofficial consolidated version of the Companies Act and Conyers’ version of the Companies Act differs in regards to section 13(1) in that the Government Consolidation sets out provisions 13(1)(a) and 13(1)(b), however the language is the same. The section as originally enacted did not contain subsections 13(1)(a) and 13(1)(b). The Companies Amendment (No. 2) Act 2011, section 4, amended section 13(1)(b) of the Companies Act 1981 by deleting the reference to subsection 2 ‘(b)’. We have followed the Government’s consolidation for consistency]

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454  Specified Business Legislation Act 2011
455  Specified Business Legislation Act 2011
456  Companies Amendment Act 1993
457  Attorney General under the Computerization and Revision of Laws Act 1989, changed 'Meetings' to 'Meeting'
458  Companies Amendment (No. 2) Act 2011
459  Companies Amendment Act 1992
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473  Companies Amendment Act 1993
474  Companies Amendment Act 1992
475  Companies Amendment Act 1992
476  Companies Amendment Act 1995
477  Institute of Chartered Accountants of Bermuda Amendment Act 2014
478  Companies Amendment Act 1984
479  Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017
480  Companies Amendment (No. 2) Act 2011
481  Companies Amendment Act 1993
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484  Companies Amendment Act 1982
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488  Companies Amendment (No. 2) Act 2011
489  Companies Amendment Act 2003
490  Companies Amendment Act 2003
491  Companies Amendment Act 2004
492  Repealed and replaced by section 14 of the Companies Amendment (No. 2) Act 2011
493  Companies Amendment Act 1984
494  Companies Amendment Act 1993
495  Companies Amendment Act 1993
496  Companies Amendment Act 1993
497  Companies Amendment (No. 2) Act 2011
498  Companies Amendment (No. 2) Act 2011
499  Companies Amendment (No. 2) Act 2011
500  Companies Amendment (No. 2) Act 2011
501  Note: The Companies Amendment (No. 2) Act 2011, section 15 set out an amendment to section 89 to delete the words “an annual general meeting”, wherever they occur, and substituting “a general meeting”; there was only one reference to “an annual general meeting” and thus we have amended the section so the subsequent sections read general meeting as well.
502  Companies Amendment Act 1998
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514  Companies Amendment (No. 2) Act 1998
515  Companies Amendment Act 1992
516  Companies Amendment Act 1995
517  Companies Amendment Act 1996
518  Companies Amendment Act 1995
519  Institute of Chartered Accountants of Bermuda Amendment Act 2014
520  Repealed and replaced by section 16(a) of the Companies Amendment (No. 2) Act 2011
521  Companies Amendment Act 1992
522  Companies Amendment Act 1993
523  Companies Amendment Act 1999
524  Companies Amendment Act 1999
525  Companies Amendment (No. 2) Act 2011
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539  Companies Amendment Act 1996
540  Companies Amendment Act 1996
541  Companies Amendment Act 2006
542  Proceeds of Crime Amendment Act 2016
543  Companies Amendment Act 1982
544  Companies Amendment Act 1992
545  Companies Amendment Act 2006
546  Repealed and replaced by section 17(a) of the Companies Amendment (No. 2) Act 2011
547  Repealed and replaced by section 17(b) of the Companies Amendment (No. 2) Act 2011
548  Companies Amendment Act 1992
549  Companies Amendment Act 1996
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The Companies Amendment Act 2000 – section 15(2) of the Companies Amendment Act 2000 deems the amendment effected by section 15(1) to come into operation as of 1st January, 2000.

Banks and Deposit Companies (Consequential Amendments) Order 1999
756  Companies Amendment Act 1982
757  Companies Amendment Act 1982
758  Companies Amendment Act 1982
759  Companies Amendment Act 1994
760  Companies Amendment (No. 2) Act 2011
761  Companies Amendment Act 1994
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775  Companies Amendment Act 2014
776  Companies Amendment Act 1997
777  Companies Amendment (No. 2) Act 2010, section 2
778  Companies Amendment Act 2014
779  Companies Amendment Act 2011
780  Companies Amendment Act 2011
781  Companies Amendment Act 2006
782  Companies Amendment Act 2014
783  Tourism Investment Act 2017
784  Bermuda Immigration and Protection Amendment Act 2017
785  Companies Amendment (No. 2) Act 2010, section 2
786  Companies Amendment (No. 2) Act 2010, section 2
787  Companies Amendment Act 1984
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805  Companies Amendment Act 2003
806  Companies Amendment Act 2006
807  Companies Amendment (No. 2) Act 1998
808  Companies Amendment Act 2006
809  Companies Amendment (No. 2) Act 2010, section 3
810  Bermuda Immigration and Protection Amendment Act 2017
811  Tourism Investment Act 2017
812  Companies Amendment Act 1992
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819  Banks and Deposit Companies (Consequential Amendments) Order 1999
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839  Trusts (Regulation of Trust Business) Act 2001
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905  Limited Liability Company Act 2016
906  Limited Liability Company Act 2016
907  Companies Amendment Act 1984
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934  Insurance Amendment Act 1998
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936  Banks and Deposit Companies (Consequential Amendments) Order 1999
937  Companies Amendment Act 1993
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940  Specified Business Legislation Amendment Act 2012
941  Companies Amendment Act 1984
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944  United States Bases (Termination of Agreements) Act 2002
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956  Companies Amendment Act 2006
957  Attorney General under the Computerization and Revision of Laws Act 1989, changed ‘mutual company’ to ‘mutual fund company’
958  Companies Amendment Act 1997
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1003  Companies Amendment Act 1984
1004  Companies Amendment Act 2006
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1007  Companies Amendment Act 1994
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1009  Companies Amendment Act 2004
1010  Companies Amendment Act 1990
1011  Attorney General under the Computerization and Revision of Laws Act 1989, changed ‘retaining’ to ‘retain’
1012  Attorney General under the Computerization and Revision of Laws Act 1989, changed ‘prevent’ to ‘prevents’
1013  Companies Amendment Act 1994
1014  Companies Amendment Act 1994
1015  Director of Public Prosecutions (Consequential Amendments) Act 1999
1016  Director of Public Prosecutions (Consequential Amendments) Act 1999
1017  Bribery Act 2016
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1019  Bribery Act 2016
1020  Bribery Act 2016
1021  Companies and Limited Liability Company Amendment Act 2017 – *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.
1022  Companies and Limited Liability Company Amendment Act 2017 - *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.
1023  Companies and Limited Liability Company Amendment Act 2017
1024  Companies Amendment Act 1995
1025  Companies and Limited Liability Company Amendment Act 2017- *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.
1026  Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017
1027  Companies Amendment Act 1995
1028  Companies and Limited Liability Company Amendment Act 2017
1029  Companies and Limited Liability Company Amendment Act 2017
Companies and Limited Liability Company Amendment Act 2017 - *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.

Companies and Limited Liability Company Amendment Act 2017
Companies Amendment Act 1994
Companies Amendment Act 1995
Companies and Limited Liability Company Amendment Act 2017 - *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.

Companies and Limited Liability Company Amendment Act 2017 - *Transitional Provision: The amendments made pursuant to the Companies and Limited Liability Company Amendment Act 2017 do not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981 that was in operation immediately before 10 March 2017 had expired by that date.

Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017
Proceeds of Crime (Miscellaneous) Act 2018
Proceeds of Crime (Miscellaneous) Act 2018
Companies Amendment Act 1992
Companies Amendment Act 1992
Repealed by section 34 of the Companies Amendment (No. 2) Act 2011
Companies Amendment Act 1992
Companies Amendment Act 1996
Companies Amendment Act 1996
Companies Amendment Act 1996
Companies Amendment Act 1996
Companies Amendment Act 2003; Repealed by the Bermuda Monetary Authority Amendment Act 2008
Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018
Companies Amendment Act 2006
Attorney General under the Computerization and Revision of Laws Act 1989, changed ‘protection’ to ‘production’

Director of Public Prosecutions (Consequential Amendments) Act 1999
Director of Public Prosecutions (Consequential Amendments) Act 1999
Companies Amendment Act 1982
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1240  No. 746/2005
1241  No. 375/2006
1242  No. 442 of 2011
1243  Government Notice No. 987 of 2009 correction notice under the Computerization and Revisions of Laws Act 1989
1244  Exempted Undertakings Tax Protection Amendment Act 1987
1245  Exempted Partnerships Act 1992
1246  Exempted Partnerships Act 1992
1247  Limited Liability Company Act 2016
1248  Limited Liability Company Act 2016
1249  Exempted Undertakings Tax Protection Amendment Act 1988
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1251  Limited Liability Company Act 2016
1252  Exempted Undertakings Tax Protection Amendment Act 1988
1253  Exempted Undertakings Tax Protection Amendment Act 2011
1254  Stamp Duties (International Business Relief) Amendment Act 1992
Limited Liability Company Act 2016 (Consequential Amendment) Order 2016
Overseas Partnerships Act 1995
Limited Liability Company Act 2016 (Consequential Amendment) Order 2016
Limited Liability Company Act 2016 (Consequential Amendment) Order 2016
Overseas Partnerships Act 1995
Overseas Partnerships Act 1995
Banks and Deposit Companies (Consequential Amendments) Order 1999
Bermuda Monetary Authority Amendment Act 2004
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Bermuda Monetary Authority Amendment Act 1990
Corporate Service Provider Business Act 2012
Companies Amendment (No. 2) Act 1998
Investment Funds Act 2006
Overseas Partnerships Act 1995
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1306 Investment Funds Act 2006
1307 Section 88(2) of the Investment Business Act 2003
1308 Investment Funds Act 2006
1309 Bermuda Monetary Authority Amendment Act 2006
1310 Trusts (Regulation of Trust Business) Act 2001
1311 Corporate Service Provider Business Act 2012
1312 Bermuda Monetary Authority Amendment Act 2014
1313 Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
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1315 Corporate Service Provider Business Act 2012
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1325 Exchange Control Amendment Act 2018
1326 Ministers (Change of Responsibilities and Style) Order 2011
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1334 Exchange Control Amendment Regulations 2017
1335 Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2018
1336 Exchange Control Amendment Regulations 1986
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1344 Exchange Control Amendment Regulations 1998
1345 Exchange Control Amendment Regulations 1998
1346 Exchange Control Amendment Regulations 1998
1347 Corporate Service Provider Business Amendment Act 2014
1348 Exchange Control Amendment Regulations 2012 (BR 75/2012)
1349 Corporate Service Provider Business Amendment Act 2014
1350 Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2018
1351 Exchange Control Amendment Regulations 2017
1352 Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2018 The Exchange Control Amendment Regulations 2017 (BR50/2017) are revoked by section 19 of the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2018 (2017:41), effective 23 March 2018
1353 Corporate Service Provider Business Amendment Act 2014
1354 Corporate Service Provider Business Act 2012
1356 Exchange Control Amendment Regulations 2017
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1361 Exchange Control Amendment Regulations 2017
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1364 Investment Business Amendment Act 2015
1365 Investment Funds Act 2006
1366 Numbering error in Act
1367 Limited Liability Company Act 2016
1368 Investment Funds Amendment Act 2010
1369 Limited Liability Company Act 2016
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1371 Ministers (Change of Responsibilities and Style) Order 2011
1372 Limited Liability Company Act 2016
1373 Investment Funds Amendment Act 2010
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1410  Investment Funds Amendment Act 2010
1411  Limited Liability Company Act 2016
1412  Limited Liability Company Act 2016
1413  Limited Liability Company Act 2016
1414  Limited Liability Company Act 2016
1415  Section 17(1)(aa) inserted by the Bermuda Monetary Authority Amendment Act 2010
1416  Investment Funds Amendment Act 2013
1417  Investment Funds Amendment Act 2013
1418  Investment Funds Amendment Act 2013
1419  Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
1420  Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
1421  Bermuda Monetary Authority (Regulatory Fees) Amendment Act 2010
1422  Limited Liability Company Act 2016
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1430  Limited Liability Company Act 2016
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