

## **COMPANIES ACT 1982**

(Chapter 2)

### **Arrangement of Sections**

#### **PART I**

##### *Accounts and Audit*

1. Accounting records.
2. Profit and loss account and balance sheet.
- 2A. Private companies: exemption from requirement to lay accounts before general meeting.
- 2B. Right of shareholders to require laying of accounts.
3. General provisions as to contents and form of accounts.
4. Obligation to lay group accounts before holding company.
5. Form of group accounts.
6. Contents of group accounts.
7. Financial year of holding company and subsidiary.
8. Signing of balance sheet.
9. Accounts and auditors' report to be annexed to balance sheet.
10. Directors' report to be attached to balance sheet.
- 10A. Actuary's certificate to be attached to balance sheet of certain insurers.
11. Right to receive copies of balance sheets and auditors' report.
12. Appointment and remuneration of auditors.
- 12A. Resolution not to appoint auditors.
13. Provisions as to resolutions relating to appointment and removal of auditors.
14. Disqualifications for appointment as auditor.
15. Auditors' report and right of access to books and to attend and be heard at meetings.
16. Construction of references to documents annexed to accounts.
17. Amendments.
- 17A. Exercise of functions in relation to insurance companies.

#### **PART II**

##### *Management*

18. Number of directors.
19. Secretary.
20. Statement of first directors and secretary to be delivered on application for registration of company.
21. Notification of changes in directors and secretary, etc.
22. Registered office of company.
23. Default in delivering notice of allotment.
- 24 to 27. Amendments.

#### **PART III**

##### *Miscellaneous and General.* 28. Amendment.

29. ....
30. Substitutions.
31. Disqualification of directors of insolvent companies.
- 32 to 34. Amendments.
35. Publication.
36. ....
37. Interpretation.
38. Amendments.
39. ....
40. Short title.

Schedule 1 Accounts.

Part I General Provisions as to Balance Sheet and Profit and Loss Account.

Part II Special Provisions where the Company is a Holding or Subsidiary Company.

Part III Exceptions for Special Classes of Company.

Part IV Interpretation of Schedule.

Schedule 2 Part I Increase of Fines.

Part II Transfer of Certain Functions of the Governor.

Schedule 3 .....

**GENERAL NOTE: The maximum fines in this Act are as increased by the Fines Act 1986 and by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.**

Received Royal Assent: 10 March 1982

Passed: 6 April 1982

## **AN ACT**

**to amend the law relating to companies and for connected purposes.**

## **PART I**

*Accounts and Audit*

### **1 Accounting records**

(1) Every company shall cause accounting records to be kept in accordance with the provisions of this section.

(2) The accounting records shall be sufficient to show and explain the company's transactions.

(3) The accounting records shall be such as to-

(a) disclose, within a reasonable time and with reasonable accuracy, the financial position of the company at any time; and

(b) enable the directors to ensure that any balance sheet or profit and loss account prepared by them complies with the requirements of section 3 (balance sheet to give a true and fair view of the company's state of affairs and profit and loss account to give a true and fair view of the company's profit or loss, etc.).

(4) The accounting records shall in particular contain-

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

(b) a record of the assets and liabilities of the company; and

(c) where the company's business involves dealing in goods, the statements mentioned in subsection (5).

(5) The statements referred to in subsection (4)(c) are-

(a) statements of stock held by the company at the end of each financial year of the company;

(b) all statements of stocktakings from which any such statement as is mentioned in paragraph (a) has been or is to be prepared; and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased showing the goods and the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

(6) Subject to subsection (7), the accounting records shall be kept at the registered office of the company or at such other place as the directors of the company think fit and shall at all times be open to inspection by the officers of the company.

(7) If accounting records are kept at a place outside the Island by a company (other than a company which is liable to pay Non-Resident Company Duty), accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at a place in the Island and shall at all times be open to inspection by the officers of the company.

**[Subs (7) amended by Non-Resident Company Duty Act 1986 s 7.]**

(8) The accounts and returns to be sent to the Island in accordance with subsection (7) shall be such as to-

(a) disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months; and

(b) enable the directors to ensure that any balance sheet or profit and loss account prepared by them under section 2 complies with the requirements of section 3.

(9) Subject to any direction with respect to the disposal of any records kept by a company given under any rules made under section 276 of the principal Act (winding up rules), any accounting records which a company is required by this section to keep shall be preserved by it-

(a) in the case of a private company, for 3 years from the date on which they are made;

and (b) in any other case, for 6 years from the date on which they are made.

(10) If a company fails to comply with any provision of subsections (1) to (7), every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable; and if any officer of the company fails to take all reasonable steps for securing compliance by the company with subsection (9) or has intentionally caused any default by the company thereunder he shall be guilty of an offence.

(11) Any person guilty of an offence under this section shall be liable-

(a) on conviction on information to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding 5,000, or to both.

## **2 Profit and loss account and balance sheet**

(1) Subject to subsection (2), the directors of every company shall at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than 9 months, or, in the case of a company carrying on business or having interests outside the Island, by more than 12 months.

(2) The Financial Supervision Commission if for any special reason it thinks fit so to do, may, in the case of any company, extend the period of 18 months and in the case of any company and with respect to any year extend the periods of 9 and 12 months.

**[Subs (2) amended by Financial Supervision Commission Act 1984 s 1 and Sch 1.]**

(3) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account, as the case may be, is made up.

(4) Subject to subsection (5), if any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall be guilty of an offence and shall, in respect of each offence, be liable-

(a) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine, or to both;

(b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(5) In any proceedings under subsection (4)-

(a) it shall be a defence to prove that the director had reasonable grounds 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; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

## **2A Private companies: exemption from requirement to lay accounts before general meeting**

(1) This section shall apply to a private company which by provision in its Articles so elects.

(2) The accounts and reports of a company to which this section applies need not be laid before the company in general meeting.

(3) In respect of a company to which this section applies-

(a) the references in section 127(1) of the principal Act and in this Act to the laying of accounts and documents required to be annexed to the balance sheet before the company in general meeting; and

(b) the requirement in section 15(2) that the auditors report be read before the company in general meeting;

shall be read as references to the sending of copies of the accounts and the report to members and others under section 11(1).

(4) This section applies in relation to the laying of group accounts before a holding company as it applies in relation to the laying of a company's own accounts.

(5) If, by reason of the amendment of the Articles of a company, the accounts and reports of the company-

(a) cease to be required to be laid before the company in general meeting; or

(b) will be required to be so laid,

the amendment shall have effect in respect of the accounts and reports for the financial year in which the amendment takes effect and subsequent financial years.

[S 2A inserted by Companies Act 1992 Sch 4.]

## **2B Right of shareholders to require laying of accounts**

(1) Where section 2A applies to a company, the copies of accounts and reports sent out in accordance with section 11(1) shall be accompanied, in the case of a member of the company, by a notice informing him of his right to require the laying of the accounts and reports before a general meeting.

(2) Section 11(5) (penalty for default) applies in relation to the requirement in subsection (1) as to the requirements contained in that section.

(3) Before the end of the period of 28 days beginning with the day on which the accounts and reports are sent out in accordance with section 11(1), any member of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.

(4) If the directors do not within 21 days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.

(5) A meeting so convened shall not be held more than 3 months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.

(7) The directors shall be deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening it.

[S 2B inserted by Companies Act 1992 Sch 4.]

## **3 General provisions as to contents and form of accounts**

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of Schedule 1, so far as applicable thereto.

(3) Save as expressly provided in this section or in Part III of Schedule 1, the requirements of subsection (2) and Schedule 1, shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The court may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if-

(a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and-

(i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

(ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) Subject to subsection (7), if any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall be guilty of an offence and shall, in respect of each offence, be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both;

(b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(7) In any proceedings under subsection (6)-

(a) it shall be a defence to prove that the director had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions or the said other requirements, as the case may be, were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(8) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires-

(a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and

(b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

#### **4 Obligation to lay group accounts before holding company**

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as 'group accounts') dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)-

(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in the Island; and

(b) subject to subsection (3), group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that-

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or  
(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or  
(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;  
and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required.

(3) The approval of the Financial Supervision Commission shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

**[Subs (3) amended by Financial Supervision Commission Act 1984 Sch 1.]**

(4) Subject to subsection (5), if any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall be guilty of an offence and shall, in respect of each offence, be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(5) In any proceedings under subsection (4)-

(a) it shall be a defence to prove that the director had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(6) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

## **5 Form of group accounts**

(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising-

(a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;

(b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose-

(a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members; the group accounts may be prepared in a form other than that required by subsection (1), and

in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

## **6 Contents of group accounts**

(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns the members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Financial Supervision Commission on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiaries state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

[Subs (2) amended by Financial Supervision Commission Act 1984 Sch 1.]

(3) Subject to subsection (4) and without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of Schedule 1 so far as applicable thereto, and if not so prepared shall give the same or equivalent information.

(4) The Financial Supervision Commission may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

[Subs (4) amended by Financial Supervision Commission Act 1984 Sch 1.]

### **7 Financial year of holding company and subsidiary**

(1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Financial Supervision Commission desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Financial Supervision Commission may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting shall not be required in the earlier of the said calendar years.

[Subs (2) amended by Financial Supervision Commission Act 1984 Sch 1 and by Companies Act 1992 Sch 2.]

**8 Signing of balance sheet.**(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company.

(2) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

### **9 Accounts and auditors' report to be annexed to balance sheet**

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(2) Any accounts so annexed shall be approved by the board of directors before the balance sheet is signed on their behalf.

(3) If any copy of a balance sheet is issued, circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

### **10 Directors' report to be attached to balance sheet**

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves within the meaning of Schedule 1.

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business, or in the company's subsidiaries, or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) Subject to subsection (4), if any person being a director of a company fails to take all reasonable steps to comply with the provisions of subsection (1), he shall be guilty of an offence and shall, in respect of each offence, be liable-

(a) on conviction on information to imprisonment for a term not exceeding 2 years or to a fine or to both;

(b) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(4) In any proceedings under subsection (3)-

(a) if the proceedings are in respect of an offence under subsection (1), it shall be a defence to prove that the director had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and

(b) a person shall not be liable to be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

#### **10A Actuary's certificate to be attached to balance sheet of certain insurers**

(1) In the case of an insurance company which carries on long term business there shall be attached to every balance sheet laid before the company in general meeting a certificate in such form as is prescribed by regulations made by the Insurance and Pensions Authority, which is signed by the actuary to the company.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) In this section-

'actuary to the company' means the person appointed pursuant to section 13 of the Insurance Act 1986;

'long term business' has the meaning given by section 34 of the Act of 1986.

(3) Subsections (3) and (4) of section 10 shall apply to this section as they apply to that section.

[S 10A inserted by Insurance Act 1986 Sch 5.]

#### **11 Right to receive copies of balance sheets and auditors' report**

(1) Subject to subsections (2) and (3), a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than 14 days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to receive notices of general meetings of the company), every holder of debentures of the company (whether he is or is not so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled.

(2) Subsection (1) is subject to the following provisions-

(a) in the case of a company not having a share capital, it shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;

(b) it shall not require a copy of those documents to be sent-

(i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled.

(3) If the copies of the documents mentioned in subsection (1) are sent less than 14 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(4) Any member of a company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, whether he is or is not so entitled, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(5) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

(6) If, when any person makes a demand for any document with which he is by virtue of subsection (4) entitled to be furnished, default is made in complying with the demand within 14 days after the making thereof, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

(7) It shall be a defence to any proceedings under this section, to prove that that person had already made a demand for and been furnished with a copy of the document.

(8) The foregoing provisions shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act, and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

[S 11 amended by Companies, etc. (Amendment) Act 2003 Sch 1 as of 1<sup>st</sup> March 2004]

## **12 Appointment and remuneration of auditors**

(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) Subject to subsection (3), at any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless-

(a) he is not qualified for reappointment; or

(b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or

(c) he has given the company notice in writing of his unwillingness to be reappointed.

(3) Where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(4) Where at an annual general meeting no auditors are appointed or reappointed, the Financial Supervision Commission, on the application of any person, may appoint an auditor to fill the vacancy.

[Subs (4) amended by Financial Supervision Commission Act 1984 Sch 1.]

(5) Subject to subsection (6), the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until the conclusion of that meeting.

(6) At the first annual general meeting-

(a) the company may remove any such auditors and appoint in their place any other persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under subsection (5) the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(7) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(8) The remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the directors or by the Financial Supervision Commission, may be fixed by the directors or by the Financial Supervision Commission as the case may be;

[Para (a) amended by Financial Supervision Commission Act 1984 Sch 1.]

(b) subject to the foregoing paragraph, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(9) For the purposes of subsection (8) any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression 'remuneration'.

[S 12 omitted by SD293/93 (as amended by SD283/94).]

### **12A Resolution not to appoint auditors**

(1) A company may by special resolution make itself exempt from the provisions of this Act relating to the audit of accounts in the following cases-

(a) if the company has been dormant from the time of its formation, by a special resolution passed before the first general meeting of the company at which annual accounts are laid;

(b) if the company has been dormant since the end of the previous financial year and is not required to prepare group accounts for that year, by a special resolution passed at a general meeting of the company at which the annual accounts for that year are laid.

(2) A company may not pass such a resolution if it is-

(a) a public company, (b) a banking or insurance company, or  
(c) a permitted person under the Investment Business Act 1991.

(3) A company is 'dormant' during a period in which no significant accounting transaction occurs, that is, no transaction which is required by section 1 to be entered in the company's accounting records; and a company ceases to be dormant on the occurrence of such a transaction.

For this purpose there shall be disregarded any transaction arising from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum.

(4) Where a company is, at the end of a financial year, exempt by virtue of this section from the provisions of this Part relating to the audit of accounts-

(a) section 11 (right to receive or demand copies of accounts and reports) has effect with the omission of references to the auditors' report; and

(b) no copies of an auditors' report need be laid before the company in general meeting.

(5) Where a company which is exempt by virtue of this section from the provisions of this Act relating to the audit of accounts-

(a) ceases to be dormant, or

(b) would no longer qualify (for any other reason) to make itself exempt by passing a resolution under this section,

it shall thereupon cease to be so exempt.

[S 12A inserted by Companies Act 1992 Sch 4 and omitted by SD293/93 (as amended by SD283/94).]

### **13 Provisions as to resolutions relating to appointment and removal of auditors**

(1) Notice of 21 days shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(2) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(3) Subject to subsection (4), where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution

representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so-

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company); and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(5) Subsections (3) and (4) shall apply to a resolution to remove the first auditors by virtue of section 12(6) as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

[S 13 omitted by SD293/93 (as amended by SD283/94).]

#### **14 Disqualifications for appointment as auditor**

(1) Subject to subsections (2) and (3), a person shall not be qualified for appointment as auditor of a company unless either-

(a) he is a member of one of the following bodies of accountants-

(i) the Institute of Chartered Accountants in England and Wales;

(ii) the Institute of Chartered Accountants of Scotland;

(iii) the Chartered Association of Certified Accountants;

[Subpara (iii) amended by Companies Act 1992 Sch 6.]

(iv) the Institute of Chartered Accountants in Ireland;

(v) the Chartered Institute of Public Finance and Accountancy;

[Subpara (v) amended by Companies Act 1992 Sch 6.]

(vi) the Association of Authorised Public Accountants; or

[Subpara (vi) added by GC109/92.]

(b) he is for the time being authorised by the Financial Supervision Commission to be so appointed on that Commission being satisfied that-

(i) no shares or debentures of the company or of a body corporate of which it is the subsidiary, have been either quoted or offered on a stock exchange (whether in the Island, United Kingdom or elsewhere) to the public for subscription or purchase; and

(ii) on the date of the commencement of this Act he was the duly appointed auditor of a private company.

[Para (b) amended by GC42/84.](2) The Financial Supervision Commission may by order amend subsection

(1)(a) by

adding or deleting any body, but shall not make any order-

(a) adding any body; or

(b) deleting any body which has not consented in writing to its deletion;

unless it has published notice of its intention to do so in two Island newspapers at least 3 months before making the order.

[Subs (2) amended by GC42/84.]

(3) This section shall not apply to a company liable to pay Non-Resident Company Duty.

[Subs (3) amended by Non-Resident Company Duty Act 1986 s 7.]

(4) Subject to subsection (5), none of the following persons shall be qualified for appointment as an auditor of a company-

(a) an officer or servant of the company;

(b) a person who is a partner of or in the employment of an officer or servant of the company;

(c).....

**[Para (c) repealed by Companies, etc. (Amendments) Act 2003 Sch 2 as of 1<sup>st</sup> March 2004]**

(5) Subsection (4)(b) shall not apply in the case of a private company.

(6) References in subsection (4) to an officer or servant shall be construed as not including references to an auditor.

(7) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of subsection (4) disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(8).....

**[Subs (8) repealed by Companies, etc. (Amendments) Act 2003 Sch 2 as of 1<sup>st</sup> March 2004]**

(8A) Notwithstanding anything in the foregoing provisions of this section, a limited liability company established under the Limited Liability Companies Act 1996 (in this subsection referred to as an 'LLC') shall be qualified for appointment as auditor of a company if, but only if,-

(a) all the members of the LLC are individuals who are qualified for appointment as auditor of the company; and

(b) no provision is made in the articles of organisation of the LLC for the management of the LLC to be vested in a manager.

**[Subs (8A) inserted by Companies (Transfer of Functions) Act 2000 s 4.]**

(9) Notwithstanding paragraph (b) of subsection (1), a person who is authorised by the Financial Supervision Commission under that paragraph shall not be appointed as an auditor of a company except where that person-.(a) was, immediately before the commencement of this subsection, the auditor of that company; or

(b) is the auditor of a company that is either a holding company or a subsidiary of the company of which he is to be appointed as an auditor.

**[Subs (9) added by Companies Act 1986 s 33.]**

(10) An applicant for authorisation under subsection (1)(b) shall provide such information and documents in support of the application as the Financial Supervision Commission may require.

**[Subs (10) added by Banking Act 1998 Sch 1.]**

(11) An authorisation under subsection (1)(b) may be given subject to conditions.

**[Subs (11) added by Banking Act 1998 Sch 1.]**

(12) Where an authorisation has been given under subsection (1)(b), the Financial Supervision Commission may at any time-

(a) revoke or suspend the authorisation; or

(b) make that authorisation subject to conditions or further conditions; or

(c) vary or revoke any condition.

**[Subs (12) added by Banking Act 1998 Sch 1.]**

(13) Section 15 of the Investment Business Act 1991 (review of Commission decisions) shall apply in respect of a decision of the Commission under subsection (12) as it applies in respect of a decision referred to in subsection (1)(a), (c) or (d) of that section.

**[Subs (13) added by Banking Act 1998 Sch 1.]**

(14) A person who is authorised under subsection (1)(b) shall, when required by the Financial Supervision Commission, provide it with such information and documents as the Commission thinks necessary for the purpose of enabling or assisting it to discharge its functions under this section.

**[Subs (14) added by Banking Act 1998 Sch 1.]**

(15) Failure to comply with a requirement under subsection (14) shall be sufficient grounds for the exercise of the power conferred by subsection (12)(a).

**[S 14 omitted by SD293/93 (as amended by SD283/94). Subs (15) added by Banking Act 1998 Sch 1.]**

## **15 Auditors' report and right of access to books and to attend and be heard at meetings**

- (1) The auditors of a company shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office.
- (2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.
- (3) The report shall-
  - (a) except in the case of a company that is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of Schedule 1, state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Companies Acts 1931 to 1974 and this Act and whether in their opinion a true and fair view is given-
    - (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;
    - (ii) in the case of the profit and loss account (if it be not framed as a consolidated profit and loss account), of the company's profit or loss for its financial year;
    - (iii) in the case of group accounts submitted by a holding company, of the state of affairs and profit or loss of the company and its subsidiaries dealt with thereby, so far as concerns members of the company;
  - (b) in the said excepted case, state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of the Companies Acts 1931 to 1974 and this Act.
- (4) It shall be the duty of the auditors of a company in preparing their report under this section, to carry out such investigations as will enable them to form an opinion as to the following matters, that is to say-
  - (a) whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and
  - (b) whether the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are in agreement with the books of account and returns;and if the auditors are of opinion that proper books of account have not been kept by the company or that proper returns adequate for their audit have not been received from branches not visited by them, or if the balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account are not in agreement with the books of account and returns, the auditors shall state that fact in their report.
- (5) Every auditor of a company shall have a right of access at all times to the book and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.
- (6) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (7) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (8) Section 326 of the principal Act shall have effect as if the provisions of subsections (1)

and (5) of this section were provisions of that Act specified in Schedule 10 thereto.

[S 15 omitted by SD293/93 (as amended by SD283/94).]

### **16 Construction of references to documents annexed to accounts**

(1) Subject to subsection (2), references in this Part to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report.

(2) Any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only so far as it gives the said information.

### **17 [Amends Table A and Table C of Schedule 1 to the Companies Act 1931.]**

### **17A Exercise of functions in relation to insurance companies**

(1) References in this Part (except section 14) and in Schedule 1, to the Financial Supervision Commission, shall, in relation to an insurance company, be construed as references to the Insurance and Pensions Authority.

[Subs (1) amended by Retirement Benefits Schemes Act 2000 Sch 2.]

(2) The Financial Supervision Commission shall not exercise any function conferred by this Part (except section 14) or by Schedule 1, in relation to an insurance company.

(3) In this section-

**'insurance company'** means a company which is authorised to carry on an insurance business under section 6 of the Insurance Act 1986;

**'Supervisor'** .....

[S 17A inserted by Insurance Act 1986 Sch 5. Definition of 'Supervisor' repealed by Retirement Benefits Schemes Act 2000 Sch 3.]

## **PART II**

### *Management*

### **18 Number of directors**

(1) Every company whether registered before or after the commencement of this Act shall have at least 2 directors.

(2) Any company, registered before the commencement of this Act, which has less than 2 directors, shall so arrange its affairs that it has at least 2 directors by the end of the period of 12 months from the passing of this Act.

(3) Subject to subsections (2) and (4), every company, and the remaining director, shall, if to the knowledge of that director the number of directors remains less than 2 for a period in excess of 3 months, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000.

(4) In any proceedings for an offence under subsection (3) a remaining director shall have a defence if he satisfies the court that he has taken all reasonable steps to secure the appointment of a replacement director.

### **19 Secretary**

(1) Every company shall have a secretary.

(2) Anything required or authorised 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 authorised generally or specially in that behalf by the directors.

(3) A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

(4) It shall be the duty of the directors of a public company having a share capital, when appointing the secretary of the company, not to appoint anyone other than a person who in the opinion of the directors has adequate knowledge and experience of the duties and

responsibilities of a company secretary and who either-

- (a) on the day on which this Act comes into operation held the office of secretary of the company or of a responsible assistant to that secretary; or
- (b) for at least three years of the five years immediately preceding the appointment has held the office of secretary of a public company; or
- (c) is a member of the Institute of Chartered Secretaries and Administrators; or
- (cc) is a member of the Chartered Institute of Management Accountants; or
- [Para (cc) inserted by Companies Act 1992 Sch 6.]
- (d) is a person qualified under section 14(l)(a) for appointment as auditor of a public company; or
- (e) is an advocate or has been called or admitted in England and Wales or Scotland as a barrister, solicitor or advocate.

[Subs (4) amended by Companies Act 1986 s 34.]

## **20 Statement of first directors and secretary to be delivered on application for registration of company.**

(1) With every memorandum delivered for registration under section 12 of the principal Act

there shall be delivered a statement in the prescribed form containing the names and relevant particulars of-

- (a) the persons who are to be the first directors of the company; and
- (b) the person who is, or the persons who are, to be the first secretary or joint secretaries of the company.

(1A) The person presenting the statement required by this section must be resident in the Island.

[Subs (1A) inserted by Corporate Service Providers Act 2000 Sch 3.]

(2) The relevant particulars mentioned above are-

- (a) with respect to a person named as director, the particulars which by section 143(l) of the principal Act are required to be contained in the register kept under that section with respect to a director; and
- (b) with respect to a person named as secretary or as one of joint secretaries, the particulars which by or under section 107(3) of the principal Act are required to be contained in the annual return of a company having a share capital with respect to the secretary or, where there are joint secretaries, with respect to each of them.

[Para (b) amended by Companies Act 1992 Sch 2.]

(3) The statement required by this section shall be signed by or on behalf of the subscribers of the memorandum and shall contain a consent signed by each of the persons named in it as a director, as secretary or as one of joint secretaries to act in the relevant capacity.

(4) Where the memorandum is delivered by a person as agent for the subscribers of the memorandum, the statement required by this section shall specify that fact and the name and address of that person.

(5) The persons named in the statement required by this section as the directors, secretary or joint secretaries of a company shall, on the incorporation of the company, be deemed to have been respectively appointed as the first directors, secretary or joint secretaries of the company; and any appointment by any articles delivered with the memorandum of a person as director or secretary of the company shall be void unless he is named as a director or as secretary in the statement.

(6) If a statement complying with the requirements of this section is not delivered as required by subsection (1) with any memorandum delivered for registration under section 12 of the principal Act the Financial Supervision Commission shall not register the memorandum or any articles delivered with it.

[Subs (6) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

## **21 Notification of changes in directors and secretary, etc**

(1) [Amends section 143 of the Companies Act 1931.](2) Notwithstanding subsection (1)-

(a) where the memorandum of a company has been delivered for registration under section 12 of the principal Act before the coming into operation of section 20, section 143(2) of that Act, as originally enacted, shall continue to apply so as to require that company to send to the Financial Supervision Commission a return containing the particulars of its first directors specified in the register required to be kept under section 143; and

**[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(b) those subsections, as originally enacted, shall continue to apply in relation to any change among a company's directors or in any of the particulars contained in that register which occurred before the coming into operation of this section.

## **22 Registered office of company**

(1) A company shall at all times have a registered office in the Island to which all communications and notices may be addressed.

**[Subs (1) amended by Companies Act 1986 Sch 1.]**

(2) The intended situation of a company's registered office on incorporation shall be specified in the statement delivered prior to incorporation of the company under section 20.

(3) Notice in the prescribed form of any change in the situation of a company's registered office shall be given within one month of the change to the Financial Supervision Commission, who shall record the new situation.

**[Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(4) If default is made in complying with subsection (1) or (3), the company and every officer of the company who is in default shall be liable to a default fine.

(5) Section 93 of the principal Act (which is superseded by this section) shall cease to have effect, but notwithstanding its repeal by this Act-

(a) where the memorandum of a company has been delivered for registration under section 12 of that Act before the coming into operation of section 20, section 93 shall continue to apply so as to require that company to send notice of the situation of its registered office to the Financial Supervision Commission within the time there mentioned; and

**[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(b) section 93 shall continue to apply in relation to any change in the situation of a company's registered office which occurred before the coming into operation of this section.

(6) Section 20(6) shall apply as if the requirements of subsection (2) were included among the requirements of that section.

## **23 Default in delivering notice of allotment**

In case of default in delivering to the Financial Supervision Commission, within one month after the allotment, any document required to be delivered by section 42 of the principal Act, the company or any person liable for the default shall apply to the Financial Supervision Commission who shall accept late delivery of the documents upon payment by the applicant of such fees as may be prescribed under section 283A of the Companies Act 1931.

**[S 23 amended by Fees and Duties Act 1989 Sch 2 and by Companies (Transfer of Functions) Act 2000 Schs 1 and 2.]**

## **24 to 27 [Amends sections 52, 79, 81 and 117 respectively of the Companies Act 1931.]**

### **PART III**

#### *Miscellaneous and General*

## **28 [Substitutes section 5 of the Companies Act 1931.]**

## **29 .....**

**[S 29 repealed by Companies Act 1986 Sch 2.]**

## **30 [Substitutes sections 46 and 46A for section 46 of the Companies Act 1931.]**

## **31 Disqualification of directors of insolvent companies**

(1) Where on an application under this section it appears to the Court-

(a) that a person-

(i) is or has been a director of a company (wherever incorporated) which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time; and

(ii) is or has been a director of another such company which has gone into liquidation with 5 years of the date on which the first mentioned company went into liquidation; and

(b) that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company,

the Court may on the application of the Financial Supervision Commission make an order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period beginning with the date of the order and not exceeding 5 years as may be specified in the order.

**[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]**

(1A) The Financial Supervision Commission shall keep an index, in the prescribed form and with the prescribed particulars of those persons subject to orders under subsection (1) and shall make the index available for inspection at the office for the registration of companies and on the Financial Supervision Commission website or in such other manner as the Financial Supervision Commission may deem appropriate.

**[Subs (1A) inserted by Companies, etc. (Amendment) Act 2003 Sch 1 as of 1<sup>st</sup> March 2004]**

(2) Where the Financial Supervision Commission intends to make an application under this section in respect of any person, it shall give not less than ten days' notice of its intention to that person, and on the hearing of the application that person may appear and himself give evidence or call witnesses.. **[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by Interpretation Act 1976 s**

**16A.]**

(3) On the hearing of an application under this section by the Financial Supervision Commission, or of an application for leave under this section by a person in respect of whom an order has been made on the application of the Financial Supervision Commission, the Financial Supervision Commission shall appear and call the attention of the Court to any matters which seem to it to be relevant and may itself give evidence or call witnesses.

**[Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by Interpretation Act 1976 s 16A.]**

(4) If any person acts in contravention of an order made under subsection (1) he shall in respect of each offence be liable-

(a) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine or to both; or

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.

(5) The Financial Supervision Commission may require the liquidator or former liquidator of any company-

(a) to furnish it with information with respect to the company's affairs; and

**[Para (a) amended by Interpretation Act 1976 s 16A.]**

(b) to produce and permit inspection of such books or documents of or relevant to the company,

as the Financial Supervision Commission may reasonably require for the purpose of determining whether to make an application under this section in respect of any person who is or has been a director of that company; and if a person makes default in complying with any such requirement the Court may, on the application of the Financial Supervision Commission, make an order requiring that person to make good the default within such time as may be specified.

**[Subs (5) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]**

(6) In this section-

'company' includes an unregistered company (wherever incorporated) within the meaning of Part X of the principal Act;

'director', in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act; and for the purposes of this section a company goes into liquidation if it is wound up by the Court, on the date of the winding up order and, in any other case, on the date of the passing of the resolution for voluntary winding up.

(7) In Schedule 1 to the principal Act, in regulation 72 of Table A and article 34 of Table C the references to an order under section 208 or 259 of that Act (disqualification of directors) shall include a reference to an order under this section..(8) Subsection (1) does not apply unless at least one of the companies there mentioned

has gone into liquidation after the date of the coming into force of this section; and the conduct to which regard may be had under paragraph (b) of that subsection does not include conduct as director of a company that has gone into liquidation before that date.

### **32 to 34 [Amends sections 109, 313 and 315 respectively of the Companies Act 1931.]**

#### **35 Publication**

Where any provision of the Companies Acts 1931 to 1974 requires the publication of any document or notice in the London Gazette, the requirements of that provision shall be deemed to be satisfied if the document or, as the case may be, notice is published in 2 Island newspapers.

#### **36 .....**

[S 36 repealed by Insurance Act 1986 Sch. 6.]

#### **37 Interpretation**

In this Act-

'the 1974 Act' means the Companies Act 1974;

'a company liable to pay Company Registration Tax' .....

[Definition of 'a company liable to pay Company Registration Tax' repealed by Companies Act 1992 Sch 6.]

'a company liable to pay Non-Resident Company Duty' shall be construed in

accordance with the Non-Resident Company Duty Act 1986;

[Definition of 'a company liable to pay Non-Resident Company Duty' inserted by Companies Act 1992 Sch 6.]

'holding company' has the meaning assigned to it by section 1(4) of the 1974 Act;

'subsidiary company' has the meaning assigned to it by section 1(1) of the 1974 Act;

'the principal Act' means the Companies Act 1931.

#### **38 Amendments**

(1) The enactments contained in the principal Act specified in column 1 of Part I of Schedule 2 (being enactments broadly described in column 2 of that Part) shall each have effect as if the maximum pecuniary penalty or fine, were a penalty or fine not exceeding the amount specified in column 4 of that Part instead of a penalty or fine not exceeding the amount specified in column 3 of that Part.

(2) The daily pecuniary penalties or fines specified in column 3 of Part I of Schedule 2 are hereby abolished and are replaced by the maximum pecuniary penalties or fines specified in column 4.

(3) Part II of Schedule 2 shall have effect in relation to the transfer of certain of the functions of the Governor under the Companies Acts 1931 to 1974 and to the other matters specified in that Part.

#### **39 .....**

[S 39 repealed by Statute Law Revision Act 1992 Sch 2.]

#### **40 Short title**

This Act may be cited as the Companies Act 1982 and shall be construed as one with the Companies Acts 1931 to 1974 and those Acts and this Act may be cited together as the

Companies Acts 1931 to 1982.

## **Schedule 1**

### **Accounts**

#### **PRELIMINARY**

1. Paragraphs 2 to 11 apply to the balance sheet and 12 to 14 to the profit and loss account, and are subject to the exceptions and modifications provided for by Part II in the case of a holding company and by Part III in the case of companies of the classes there mentioned; and this Schedule has effect in addition to the provisions of section 127 of the principal Act.

#### **PART I**

### **GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT**

#### *Balance Sheet*

2. The authorised share capital, issued share capital, liabilities and assets shall be summarised, with such particulars as are necessary to disclose the general nature of the assets and liabilities, and there shall be specified-

(a) any part of the issued capital that consists of redeemable preference shares, and the earliest date on which the company has power to redeem those shares;

(b) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

(c) the amount of the share premium account and the amount of the capital redemption reserve fund;

(d) particulars of any redeemed debentures which the company has power to re-issue.

3. There shall be stated under separate headings, so far as they are not written off-

(a) the preliminary expenses;

(b) any expenses incurred in connection with any issue of share capital or debentures; (c) any sums paid by way of commission in respect of any shares or debentures;

(d) any sums allowed by way of discount in respect of any debentures; and

(e) the amount of the discount allowed on any issue of shares at a discount.

4. (1) The reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the company's business:

Provided that-

(a) where the amount of any class is not material, it may be included under the same heading as some other class; and

(b) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading.

(2) Fixed assets shall also be distinguished from current assets.

(3) The method or methods used to arrive at the amount of the fixed assets under each heading shall be stated.

5. (1) The method of arriving at the amount of any fixed asset shall, subject to sub-paragraph

(2), be to take the difference between-

(a) its cost or, if it stands in the company's books at a valuation, the amount of the valuation; and

(b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value;

and for the purposes of this paragraph the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of a valuation of those assets made at the commencement of this Act and, where any of those assets are sold, the

said net amount less the amount of the sales shall be treated as if it were the amount of a

valuation so made of the remaining assets.

(2) Sub-paragraph (1) shall not apply-

(a) to assets for which the figures relating to the period beginning with the commencement of this Act cannot be obtained without unreasonable expense or delay; or

(b) to assets the replacement of which is provided for wholly or partly-

(i) by making provisions for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue; or

(c) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or

(d) to goodwill, patents or trade marks.

(3) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1) there shall be shown-

(a) the aggregate of the amounts referred to in paragraph (a) of that sub-paragraph; and

(b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As respects the assets under each heading whose amount is not arrived at in accordance with sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (2)(b) there shall be stated-

(a) the means by which their replacement is provided for; and

(b) the aggregate amount of the provision (if any) made for renewals and not used.

6. (1) Subject to sub-paragraph (2), the aggregate amounts respectively of capital reserves, revenue reserves and provisions (other than provisions for depreciation, renewals or diminution in value of assets) shall be stated under separate headings.

(2) Sub-paragraph (1)-

(a) shall not require a separate statement of any of the said three amounts which is not material; and

(b) the Financial Supervision Commission may direct that it shall not require a separate statement of the amount of provisions where it is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account a provision (other than as aforesaid) shall be so framed or marked as to indicate that fact.

**[Item (b) amended by Financial Supervision Commission Act 1984 s 1 and Sch 1.]**

7. (1) There shall also be shown (unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material)-

(a) where the amount of the capital reserves, of the revenue reserves or of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) shows an increase as compared with the amount at the end of the immediately preceding financial year, the source from which the amount of the increase has been derived; and

(b) where-

(i) the amount of the capital reserves or of the revenue reserves shows a decrease as compared with the amount at the end of the immediately preceding financial year; or

(ii) the amount at the end of the immediately preceding financial year of the provisions (other than provisions for depreciation, renewals or diminution in value of assets) exceeded the aggregate of the sums since applied and amounts still retained for the purposes thereof;

the application of the amounts derived from the difference.

(2) Where the heading showing any of the reserves or provisions aforesaid is divided into sub-headings, this paragraph shall apply to each of the separate amounts shown in the

sub-headings instead of applying to the aggregate amount thereof.

8. (1) There shall be shown under separate headings-

(a) the aggregate amounts respectively of the company's trade investments, quoted investments other than trade investments and unquoted investments other than trade investments;

(b) if the amount of the goodwill and of any patents and trademarks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, the said amount so shown or ascertained so far as not written off or, as the case may be, the said amount so far as it is so shown or ascertainable and as so shown or ascertained, as the case may be;

(c) the aggregate amount of any outstanding loans made under the authority of provisos

(b) and (c) of section 45(l) of the principal Act;

(d) the aggregate amount of bank loans and overdrafts;

(e) the net aggregate amount which is recommended for distribution by way of dividend.

(2) Nothing in sub-paragraph 1(b) shall be taken as requiring the amount of the goodwill, patents and trademarks to be stated otherwise than as a single item.

(3) The heading showing the amount of the quoted investments other than trade investments shall be sub-divided, where necessary, to distinguish the investments as respects which there has, and those as respects which there has not, been granted a quotation or permission to deal on a recognised stock exchange.

9. Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the fact that that liability is so secured shall be stated, but it shall not be necessary to specify the assets on which the liability is secured.

10. Where any of the company's debentures are held by a nominee of or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

11. (1) The matters referred to in this paragraph shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

(2) The number, description and amount of any shares in the company which any person has an option to subscribe for, together with the following particulars of the option, that is to say-

(a) the period during which it is exercisable;

(b) the price to be paid for shares subscribed for under it..(3) The amount of any arrears of fixed cumulative dividends on the company's shares and

the period for which the dividends or, if there is more than one class, each class of them are in arrear, the amount to be stated before deduction of income tax, except that, in the case of tax free dividends, the amount shall be shown free of tax and the fact that it is so shown shall also be stated.

(4) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.

(5) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.

(6) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.

(7) If in the opinion of the directors any of the current assets have not a value, on realisation in the ordinary course of the company's business, at least equal to the amount at which they are stated, the fact that the directors are of that opinion.

(8) The aggregate market value of the company's quoted investments, other than trade investments, where it differs from the amount of the investments as stated, and the stock exchange value of any investments of which the market value is shown (whether separately or not) and is taken as being higher than their stock exchange value.

(9) The basis on which foreign currencies have been converted into sterling, where the amount of the assets or liabilities affected is material.

(10) The basis on which the amount, if any, set aside for income tax is computed.

(11) Except in the case of the first balance sheet laid before the company after the commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

#### *Profit and Loss Account*

12. (1) There shall be shown-

(a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;

(b) the amount of the interest on the company's debentures and other fixed loans;

(c) the amount of the charge for the Island's income tax and other Island taxation on profits, including, where practicable, as Island income tax any taxation imposed elsewhere to the extent of the relief, if any, from Island income tax and distinguishing where practicable between income tax and other taxation;

(d) the amounts respectively provided for redemption of share capital and for redemption of loans;

(e) the amount, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;

(f) subject to sub-paragraph (2), the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;

(g) the amount of income from investments, distinguishing between trade investments and other investments;

(h) the aggregate amount of the dividends paid and proposed.

(2) The Financial Supervision Commission may direct that a company shall not be obliged to show an amount set aside to provisions in accordance with sub-paragraph (1)(f), if it is satisfied that that is not required in the public interest and would prejudice the company, but subject to the condition that any heading stating an amount arrived at after taking into account the amount set aside as aforesaid shall be so framed or marked as to indicate that fact.

**[Subpara (2) amended by Financial Supervision Commission Act 1984 Sch 1.]**

13. If the remuneration of the auditors is not fixed by the company in general meeting, the amount thereof shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression 'remuneration'.

14. (1) The matters referred to in this paragraph shall be stated by way of note, if not otherwise shown.

(2) If depreciation or replacement of fixed assets is provided for by some method other than a depreciation charge or provision for renewals, or is not provided for, the method by which it is provided for or the fact that it is not provided for, as the case may be.

(3) The basis on which the charge for Island income tax is computed.

(4) Except in the case of the first profit and loss account laid before the company after the commencement of this Act the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account.

(5) Any material respects in which any items shown in the profit and loss account are affected-

(a) by transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non-recurrent nature; or

(b) by any change in the basis of accounting.

## **PART II**

### **SPECIAL PROVISIONS WHERE THE COMPANY IS A HOLDING OR**

## **SUBSIDIARY COMPANY**

### *Modifications of and Additions to Requirements as to Company's own Accounts*

15. (1) This paragraph shall apply where the company is a holding company, whether or not it is itself a subsidiary of another body corporate.

(2) The aggregate amount of assets consisting of shares in, or amounts owing (whether on account of a loan or otherwise) from, the company's subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from all the other assets of the company, and the aggregate amount of indebtedness (whether on account of a loan or otherwise) to the company's subsidiaries shall be so set out separately from all its other liabilities and-

(a) the references in Part I of this Schedule to the company's investments shall not include investments in its subsidiaries required by this paragraph to be separately set out; and

(b) paragraphs 5, 12(1)(a) and 14(2), shall not apply in relation to fixed assets consisting of interests in the company's subsidiaries.

(3) There shall be shown by way of note on the balance sheet or in a statement or report annexed thereto the number, description and amount of the shares in and debentures of the company held by its subsidiaries or their nominees, but excluding any of those shares or debentures in the case of which the subsidiary is concerned as personal representative or in the case of which it is concerned as trustee and neither the company nor any subsidiary thereof is beneficially interested under the trust, otherwise than by way of security only for the purpose of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(4) Subject to sub-paragraph (5), where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing-

(a) the reasons why subsidiaries are not dealt with in group accounts;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa) -

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their previous financial years since they respectively became the holding company's subsidiary;

(c) the net aggregate amount of the subsidiaries' profits after deducting the subsidiaries' losses (or vice versa)-

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company; and

(ii) for their other financial years since they respectively became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts;

(d) any qualifications contained in the report of the auditors of the subsidiaries on their accounts for their respective financial years ending as aforesaid, and any note or saving contained in those accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far as the matter which is the subject of the qualification or note is not covered by the company's own accounts and is material from the point of view of its members; or, in so far as the information required by this sub-paragraph is not obtainable, a statement that it is not obtainable.

(5) The Financial Supervision Commission may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary sub-paragraph (4) shall not apply or shall apply only to such extent as may be provided by the direction.

**[Subpara (5) amended by Financial Supervision Commission Act 1984 Sch 1.]**

(6) Sub-paragraph 4(b) and (c) shall apply only to profits and losses of a subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for the purposes of paragraphs 15(4)(b) and (c)) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where-

(a) the company is itself the subsidiary of another body corporate; and

(b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated by accruing from day to day during that year and be apportioned accordingly.

**[Subpara (6) amended by Companies Act 1992 s 4.]**

(7) Where group accounts are not submitted, there shall be annexed to the balance sheet a statement showing, in relation to the subsidiaries (if any) whose financial years did not end with that of the company-

(a) the reasons why the company's directors consider that the subsidiaries' financial years should not end with that of the company; and

(b) the dates on which the subsidiaries' financial years ending last before that of the company respectively ended or the earliest and latest of those dates.

16. (1) The balance sheet of a company which is a subsidiary of another body corporate, whether or not it is itself a holding company, shall show the aggregate amount of its indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary and the aggregate amount of the indebtedness of all such bodies corporate to it, distinguishing in each case between indebtedness in respect of debentures and otherwise.

(2) For the purposes of this paragraph a company shall be deemed to be a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is the other's.

*Consolidated Accounts of Holding Company and Subsidiaries*

17. Subject to the following paragraphs of this Part, the consolidated balance sheet and profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with by the consolidated accounts, but with such adjustments (if any) as the directors of the holding company think necessary.

18. Subject as aforesaid and to Part III, the consolidated accounts shall, in giving the said information, comply, so far as practicable, with the requirements of this Act as if they were the accounts of an actual company.

19. Section 127 of the principal Act shall not, by virtue of paragraphs 17 and 18, apply for the purpose of the consolidated accounts.

20. Paragraph 7 shall not apply for the purpose of any consolidated accounts laid before a company with the first balance sheet so laid after the commencement of this Act.

21. In relation to any subsidiaries of the holding company not dealt with by the consolidated accounts-

(a) paragraph 15(2) and (3) shall apply for the purpose of those accounts as if those accounts were the accounts of an actual company of which they were subsidiaries;

and

(b) there shall be annexed the like statement as is required by paragraph 15(4) where there are no group accounts, but as if references therein to the holding company's accounts were references to the consolidated accounts.

22. In relation to any subsidiaries (whether or not dealt with by the consolidated accounts), whose financial years did not end with that of the company, there shall be annexed the like

statement as is required by paragraph 15(7) where there are no group accounts.

### **PART III**

#### **EXCEPTIONS FOR SPECIAL CLASSES OF COMPANY**

23. (1) A discount company shall not be subject to the requirements of Part I other than-  
(a) as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except sub-paragraph (1)(d)), paragraphs 9 and 10, and paragraph 11 (except sub-paragraph (8) ); and

(b) as respects its profit and loss account, those of paragraph 12(1)(h), paragraph 13 and paragraph 14(1), (4) and (5);

but, where in its balance sheet capital reserves, revenue reserves or provisions (other than provisions for depreciation, renewals or diminution in value of assets) are not stated separately, any heading stating an amount arrived at after taking into account such a reserve or provision shall be so framed or marked as to indicate that fact, and its profit and loss account shall indicate by appropriate words the manner in which the amount stated for the company's profit or loss has been arrived at.

**[Subpara (1) amended by Companies Act 1986 s 35.]**

(2) The accounts of a discount company shall not be deemed, by reason only of the fact that they do not comply with any requirements of the said Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

**[Subpara (2) amended by Companies Act 1986 s 35.]**(3) In this paragraph-  
'banking company' .....

**[Definition of 'banking company' repealed by Companies Act 1986 s 35.]**

'discount company' means any company which satisfies the Financial Supervision Commission that it ought to be treated for the purposes of this Schedule as a discount company.

**[Definition of 'discount company' amended by Financial Supervision Commission Act 1984 Sch 1.]**

24. ....

**[Para 24 repealed by Insurance Act 1986 Sch 6.]**

25. (1) A company to which this paragraph applies shall not be subject to the following requirements of this Schedule, that is to say-

(a) as respects its balance sheet, those of paragraph 4 (except so far as the said paragraph relates to fixed and current assets) and paragraphs 5, 6 and 7; and

(b) as respects its profit and loss account, those of paragraph 12(1)(a), (e) and (f),

but a company taking advantage of this paragraph shall be subject, instead of the said requirements, to any prescribed conditions as respects matters to be stated in its accounts or by way of note thereto and as respects information to be furnished to the Financial Supervision Commission or a person authorised by the Financial Supervision Commission to require it.

**[Subpara (1) amended by Financial Supervision Commission Act 1984 Sch 1.]**

(2) The accounts of a company shall not be deemed, by reason only of the fact that they do not comply with any requirements of Part I from which the company is exempt by virtue of this paragraph, not to give the true and fair view required by this Act.

(3) Subject to sub-paragraph (4), this paragraph applies to companies of any class prescribed for the purposes thereof, and a class of companies may be so prescribed if it appears to the Financial Supervision Commission desirable in the Island's interest.

**[Subpara (3) amended by Financial Supervision Commission Act 1984 s 1 and Sch 1.]**

(4) If the Financial Supervision Commission is satisfied that any of the conditions prescribed for the purposes of this paragraph have not been complied with in the case of any company, it may direct that so long as the direction continues in force this paragraph shall not apply to the company.

**[Subpara (4) amended by Financial Supervision Commission Act 1984 s 1 and Sch 1.]**

26. Where a company entitled to the benefit of any provision contained in this Part is a holding company, the reference in Part II to consolidated accounts complying with the requirements of this Act shall, in relation to consolidated accounts of that company, be

construed as referring to those requirements in so far only as they apply to the separate accounts of that company.

## **PART IV. INTERPRETATION OF SCHEDULE**

27. (1) In this Schedule, unless the context otherwise requires-

(a) **'provision'** shall, subject to sub-paragraph (2), mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(b) **'reserve'** shall not, subject to sub-paragraph (2), include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(c) **'capital reserve'** shall not include any amount regarded as free for distribution through the profit and loss account and the expression **'revenue reserve'** shall mean any reserve other than a capital reserve;

(d) **'liability'** in this paragraph, shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where-

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability;

is in excess of that which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

28. For the purposes aforesaid, **'quoted investment'** means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, or on any stock exchange of repute outside the Island and the expression **'unquoted investment'** shall be construed accordingly.

## **Schedule 2**

### **PART I**

#### **INCREASE OF FINES**

[Part I amended by Statute Law Revision Act 1983, by Companies Act 1986 Sch 2 and by Companies Act 1992 Sch 7 and amends the following Act -

Companies Act 1931 q.v.]

[Entries relating to sections 94(2), 94(3) and 94(4) of the Companies Act 1931 repealed by Companies, etc. (Amendments) Act 2003 Sch 2 as of 1<sup>st</sup> March 2004]

### **PART II**

#### **TRANSFER OF CERTAIN FUNCTIONS OF THE GOVERNOR**

[Part II amended by GC155/91, by Financial Supervision Commission Act 1984 Sch 2 and by Treasury Act 1985 Sch 3, and amends the following Act -.Companies Act 1931 q.v.]

## **Schedule 3**

[Sch 3 repealed by Statute Law Revision Act 1992 Sch 2.]