



Isle of Man
Government
Reiltys Ellan Vannin

THE TREASURY

COMPANIES BILL 2005

A CONSULTATION DOCUMENT

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TREASURY CONSULTATION DOCUMENT

COMPANIES BILL 2005

Introduction

On 17th February 2004, the Treasury Minister announced in his budget speech that he proposed to launch a full-scale reform of company law in the Isle of Man.

In the course of his speech, he commented that:-

“I am... .. conscious of the views expressed from a number of quarters of the need for a thorough review of the Island’s company law to enhance our competitiveness whilst maintaining our hard won reputation as a high quality, well regulated jurisdiction.

I accept the need for this to be addressed without delay and to this end I propose taking direct responsibility for the review. I have established a high level Steering Group consisting of the Attorney General, Chief Executive of the Financial Supervision Commission and the Chief Financial Officer, to assist me in this task.

I believe that it is vital that we maximize every opportunity to promote and develop the Island’s business environment in the forthcoming years and I further believe that this is an appropriate means by which we can achieve this objective”.

In April 2004, the Steering Group referred to in the budget speech (the “Steering Group”) issued a consultative paper with a view to seeking the views of interested parties as to the Steering Group’s detailed remit and, in particular, the Steering Group sought opinions as to the scope of the proposed company law review.

The consultative paper elicited some 16 responses and the majority view expressed was that the Island needed to update and modernise its company law with all due expedition. Of the six options set out in the paper (which ranged from a pure consolidation of existing company and insolvency law to a major root and branch reform thereof), the one that tended, ultimately, to find most favour was that designated as Option E, namely “Retain the existing corporate law framework (with or without consolidating the legislation) and create in addition a new ‘international company’.”

The Steering Group has since had discussions informally with, and input from, a variety of individuals and organisations involved in the legal and corporate service sectors, as a result of which it has become apparent that the need to create a modern Isle of Man corporate vehicle is now most urgent. Since a full scale review and amendment of the Companies Acts 1931-2004 (the “CA 1931-2004”) would be an extremely lengthy exercise, it was felt that the most appropriate and immediate method to achieve the desired product would be to introduce a separate, largely stand-alone, piece of legislation allowing for a new type of Manx company which would co-exist with present and future companies incorporated under the CA 1931-2004; as a longer term project, the appropriateness of material revisions to the CA 1931-2004 and new insolvency legislation could then be examined.

The legislation and corporate vehicles available in a number of different jurisdictions, both onshore and offshore, have been examined with a view to creating a new Manx corporate vehicle (an “NMV”) that is likely to be attractive to business (by virtue, inter alia, of being simple and inexpensive to administer and being based upon a stand alone and relatively straight-forward Act which adopts principles and structures of company law which it is hoped will be readily understood and accepted by professionals and clients both locally and internationally). In doing so, the Steering Group has, of course, also been fully aware of the Isle of Man’s obligations to the international community and has sought to build certain safeguards into the legislation in light of the same (for example, by generally requiring an NMV to appoint a registered agent in the Isle of Man which holds an appropriate licence under the Island’s fiduciary services legislation).

A draft of the proposed NMV legislation was the subject of review by off-Island experts engaged for the purpose. Mr Terence Mowschenson QC of Wilberforce Chambers reviewed and commented from a practical company law perspective and Mr Richard Hay of Stikeman Elliott examined the NMV’s attributes in the context of the Island’s current and likely future obligations in terms of international standards and in the context of the current company law regimes which exist in other onshore and offshore jurisdictions. In summary, the advisers concluded that, if enacted, the NMV legislation would provide a modern and practical company law regime that would also be acceptable in terms of the commonly adopted benchmarks of international standards. Mr Mowschenson also considered that the new type of Manx company could co-exist alongside companies incorporated under the CA 1931-2004.

The Steering Group and its external advisers have spent a significant amount of time in consideration of three specific matters relating to the proposed NMV legislation, namely (i) whether or not corporate directors should be permitted, (ii) whether annual returns should be required, and (iii) whether overseas companies with a place of business in the Island should be required to register under the legislation (and, if so, what should constitute a “place of business” for such purpose). In summary, the conclusions to date are that corporate directors should be permitted within certain limitations, annual returns should only be required for companies undertaking business locally, and an overseas company registration system would be appropriate but that the provision by a person in the Island of corporate administration services to an overseas company should not, of itself, result in a place of business being established in the Island. The Steering Group would be particularly interested in comments upon these proposed aspects of the NMV legislation.

The Steering Group considered it important that companies incorporated under the CA 1931 – 2004 should be unaffected by the proposed new legislation and be able to continue to function as they do now or, alternatively, convert themselves into NMVs, should they wish to do so. In addition, it may be noted that, if the new legislation is introduced, it will still be possible to incorporate companies under the CA 1931 – 2004, and it will be readily apparent (amongst other things, from the constitutional documents) under which legislation the relevant company is established and operating. Thus, it is envisaged that the two systems will work in parallel, as is already the case with companies incorporated under the CA 1931 – 2004 and those formed under the Limited Liability Companies Act 1996.

The result of all the above deliberations and consultations is the Companies Bill 2005 (the “Bill”) set out in Appendix 2 to this paper, the key aspects of which are summarised in Appendix 1 hereto. In addition Appendix 3 to this paper sets out certain additional provisions which may be included within the Bill with a view to enhancing the commercial attractiveness of the NMV, and comments are invited thereon. Depending upon the feedback received and further analysis by the Steering Group, some or all of those additional provisions may be included in the Bill prior to its introduction into the legislative process.

Consultation

It is intended that the NMV should be introduced to coincide with the introduction of the zero rate of corporate tax in early 2006 and, to that end, it is proposed that the consultation period in respect of the Bill should be kept reasonably short. Since the NMV will be a new product and existing companies and other legislation will not be amended thereby to any great extent, it is hoped that a short consultation timeframe will not cause too many difficulties, given the industry's expressed desire for the issue of company law reform to be addressed without delay.

It would greatly assist the consultation process if members of professional and industry bodies and associations operating on the Island could provide their views in a consolidated fashion through the relevant body or association, rather than directly to the Steering Group, if possible; however, all persons are, of course, free to respond directly should they so wish. In any event, all submissions must be made on or before Friday 30 September 2005 to:

Kim Corlett

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Email: kim.corlett@treasury.gov.im

Appendix 1
Companies Bill 2005
Key Features

Section A

The following are considered to be some of the key features of the NMV proposed in terms of the Bill:

1. minimal registry filings
2. unlimited capacity, but restricted objects permissible
3. no capital maintenance requirements (subject to solvency)
4. no authorised capital
5. shares of no par value possible
6. redemptions and purchases of shares and distributions of income and capital possible (subject to solvency)
7. no financial assistance prohibitions
8. no annual return requirement (other than for certain companies carrying on business locally)
9. no annual general meeting requirement
10. requirement for a registered agent
11. corporate directors permissible within certain limits
12. no prescriptive accounting requirements
13. protected cell companies permissible
14. a relatively simple redomiciliation procedure
15. foreign company registration procedures
16. no differentiation between public and private companies
17. relatively simple merger and consolidation procedures

Section B

In a little more detail the Bill deals with the following:

- **Part I - page 19**

Provides for the types of company that may be established, the method of their establishment and the provisions of their memoranda and articles of association, as well as covering company names and corporate capacity and powers.

- **Part II – page 27**
Covers the nature of shares and their rights and contains provisions concerning their issue and transferability.
- **Part III – page 35**
Deals with distributions and includes details of the solvency test required therefor and for the purchase and redemption of shares.
- **Part IV – page 40**
Details the meaning of ‘shareholder’ and ‘guarantee member’ and covers such matters as the register of members, members’ meetings and voting rights.
- **Part V – page 45**
Contains requirements in respect of, inter alia, registered offices and registered agents, corporate records and the execution of documents.
- **Part VI – page 52**
Sets out detailed provisions concerning directors, directors’ interests, proceedings of directors and related matters.
- **Part VII – page 59**
Allows for the establishment of protected cell companies and contains provisions concerning their share capital, attribution of assets and liabilities, receiverships and liquidations.
- **Part VIII – page 69**
Covers the registration of charges created by companies established under the legislation, including a simplified procedure for the late registration thereof.
- **Part IX – page 72**
Allows for company re-registrations and the registration under the legislation of companies formed under the CA 1931-2004.
- **Part X – page 77**
Contains simplified procedures for corporate mergers, consolidations and arrangements and addresses the position of dissenting shareholders.
- **Part XI – page 88**
Deals with the continuance and discontinuance of companies under the legislation.
- **Part XII – page 94**
Provides for members’ remedies, including derivative and personal actions.

- **Part XIII – page 97**
Deals with the registration requirements in respect of overseas companies which have established a place of business in the Island.
- **Part XIV – page 100**
Covers the liquidation, receivership, striking off, dissolution and restoration of companies.
- **Part XV – page 107**
Contains provisions for the investigation of companies.
- **Part XVI – page 108**
Allows for the disqualification of unfit persons.
- **Part XVII – page 110**
Contains administrative and general provisions, including optional public registrations of certain details.
- **Part XVIII – page 114**
Contains miscellaneous provisions and certain definitions.

Section C

Fees

The precise fees to be levied in relation to the incorporation of an NMV and the ongoing annual fees have yet to be determined. However, it is anticipated that such fees will be set at levels which are competitive in terms of those charged in other offshore jurisdictions. Comments are invited generally in relation to the appropriate levels of fees that should apply.

Appendix 2

Companies Bill 2005

COMPANIES BILL

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Companies Bill

A BILL

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

We, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

PART I

INCORPORATION AND STATUS OF COMPANIES

Chapter 1 - Incorporation

Types of company.

1. A company may be incorporated or continued under this Act as:
 - (a) a company limited by shares;
 - (b) a company limited by guarantee;
 - (c) a company limited by shares and by guarantee;
 - (d) an unlimited company with shares; or
 - (e) an unlimited company without shares.

Application to incorporate a company.

2. (1) Subject to subsection (2), application may be made to the Registrar for the incorporation of a company by filing:
 - (a) a memorandum complying with section 5 that is signed by one or more subscribers;
 - (b) if the articles of the company are to differ from the relevant model articles or if the company is a protected cell company

or an unlimited company without shares, articles signed by each subscriber; and

- (c) a document in the approved form signed by the person named in the memorandum as the first registered agent of the company, signifying such person's consent to act as registered agent.

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

Incorporation of a company.

3. (1) Upon receipt of the documents filed under section 2(1), the Registrar shall:

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

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

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

Subscribers become members of the company on incorporation.

4. On the incorporation of a company:

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

Chapter 2 – Memorandum and Articles

Memorandum.

5. (1) The memorandum of a company shall state:

- (a) the name of the company;
- (b) whether the company is:
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and guarantee;

- (iv) an unlimited company with shares; or
- (v) an unlimited company without shares;
- (c) the address of the first registered office of the company;
- (d) the name of the first registered agent of the company;
- (e) the full name and residential or business address of each subscriber;
- (f) in the case of a company limited by shares and an unlimited company with shares, the agreement of each subscriber to take one or more shares on the incorporation of the company;
- (g) in the case of a company limited by shares and by guarantee the agreement of each subscriber who, on incorporation, will not be a guarantee member to take one or more shares on the incorporation of the company;
- (h) in the case of a company limited by guarantee and a company limited by shares and by guarantee, the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that the company is wound up while such person is a guarantee member or within 1 year (or such longer period as may be specified for the purpose in the memorandum) after such person ceased to be a guarantee member; and
- (i) in the case of a company limited by shares that is a protected cell company, that the company is a protected cell company.

(2) Subsection (1)(h) does not prevent a subscriber who, on the incorporation of a company limited by shares and by guarantee, will be a guarantee member from also agreeing in the memorandum to take one or more shares in the company on its incorporation.

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

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

(4) The memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

Power to prescribe model articles.

- 6.** (1) Regulations may prescribe model articles for each of:
- (a) a company limited by shares;
 - (b) a company limited by guarantee;
 - (c) a company limited by shares and by guarantee; and

(d) an unlimited company with shares.

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

(3) If the proposed articles:

(a) make no provision for a matter for which provision is made by the relevant model articles; and

(b) do not expressly or by necessary implication exclude that provision of those model articles,

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

(4) Subsection (3) does not apply where the company is an unlimited company without shares or a protected cell company (in respect of which there are no relevant model articles).

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

Effect of memorandum and articles.

7. (1) The memorandum and articles of a company are binding as between:

(a) the company and each member of the company; and

(b) each member of the company.

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

Amendment of memorandum and articles.

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

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

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

(b) that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met.

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

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

(a) to restrict the rights or powers of the members to amend the

memorandum or articles;

- (b) to change the majority of the voting rights of members required to be exercised in order to pass a resolution to amend the memorandum or articles; or
- (c) in circumstances where the memorandum or articles cannot be amended by the members,

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

Filing of notice of amendment of memorandum or articles.

9. Where the memorandum or articles of a company have been amended, the company shall file for registration:

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

Provision of copies of memorandum and articles to members.

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

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

Chapter 3 – Company Names

Required part of company name.

11. (1) Subject to subsections (2), (3) and (4), the name of a company specified in section 1, paragraphs (a) to (c), shall end with:

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

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

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

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

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

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

Restrictions on company names.

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

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

any regulations;

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

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

Foreign character name.

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

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

Company may change name.

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

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

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

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

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

Registrar may direct change of name.

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

be not less than 21 days after the date of the notice.

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

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

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

Effect of change of name.

16. A change of the name of a company under section 14 or 15:

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

Re-use of company names.

17. Regulations may provide for the re-use of names previously used by companies that are or have been registered under this Act or the Companies Act 1931 but which have:

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

Reservation of name.

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

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

Use of company name.

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

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

are clearly stated in every written communication by, or on behalf

of, the company.

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

Chapter 4 – Capacity and Powers

Separate legal personality.

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

Capacity.

21. (1) Notwithstanding any provision to the contrary included in its memorandum or articles, a company has (irrespective of corporate benefit and irrespective of whether or not it is in the best interests of the company to do so), unlimited capacity to carry on or undertake any business or activity, to do, or to be subject to, any act or to enter into any transaction.

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

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

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

Power of directors to bind the company.

22. (1) In favour of a person who deals with a company in good faith, the power of the directors to bind the company or to authorise others to do so, shall be deemed to be free of any limitation under the company's memorandum and articles.

(2) For this purpose:

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

(3) The references above to limitations on the directors' power under the company's memorandum and articles include limitations deriving:

- (a) from a resolution of members or any class thereof; or
- (b) from any agreement between the members or any class thereof.

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

Personal liability. **23.** Subject to section 59(5), no director, officer, agent or liquidator of a company is liable for any liability or default of the company, unless specifically provided in this Act or in any other enactment, and except in so far as that person may be liable for that person's own conduct or acts.

Constructive notice. **24.** (1) A person is not deemed to have notice or knowledge of any document relating to a company, including the memorandum and articles, or of the provisions or contents of any such document, by reason only of the fact that a document:

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

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

PART II

SHARES

Chapter 1 – General

Application of this Part. **25.** This Part applies to any company incorporated, continued or re-registered as a company limited by shares, a company limited by shares and by guarantee or an unlimited company with shares.

Legal nature of shares. **26.** A share in a company is personal property.

Rights attaching to shares. **27.** (1) Subject to subsection (2), a share in a company confers on the holder:

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

(2) Subject to contrary provision in its memorandum or articles, a company:

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

Types of shares. **28.** (1) Without limiting section 27(2) but subject to section 30, shares in a company may:

- (a) be convertible, common or ordinary;
- (b) be redeemable at the option of the shareholder or the company or either of them;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited or conditional rights, including voting rights;
- (e) entitle participation only in certain assets; or
- (f) confer no voting rights,

or any combination thereof.

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

Par value and no par value shares.

29. (1) Subject to contrary provision in the memorandum or articles of a company:

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

(2) The par value of a par value share may be a fraction of the smallest denomination of the currency in which it is issued.

Prohibition on bearer shares.

30. (1) A company has no power to, and shall not:

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

and, accordingly, any such purported issue, conversion or exchange shall be void and of no effect.

(2) A company that attempts or purports to contravene subsection (1) commits an offence.

Fractional shares.

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

(2) A fractional share has the corresponding fractional rights, obligations and liabilities of a whole share of the same class.

Alteration of share capital.

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

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

- (c) sub-divide such shares, or any of them, into shares of smaller amount.

Share certificates.

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

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

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

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

(3) Any share certificate issued by a company:

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

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

(4) A share certificate issued in accordance with subsection (2) specifying a share or shares held by a member of the company is *prima facie* evidence of the title of the member to the share or shares specified therein.

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

Chapter 2 – Issue of Shares

Issue of shares.

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

Power to pay commissions

35. (1) Subject to contrary provision in its memorandum or articles, a company may pay commissions at such rates or in such amounts as the directors may determine to any person in consideration of such person subscribing, or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company.

	<p>(2) Any commissions referred to in subsection (1) may be satisfied by payment in cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.</p>
Pre-emptive rights.	<p>36. (1) Subsections (2) to (4) apply to a company where the memorandum or articles of the company expressly provide that this section shall apply to the company, but not otherwise.</p> <p>(2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or in priority to shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.</p> <p>(3) Shares offered to existing shareholders under subsection (2) shall be offered at such price and on such terms as the shares are to be offered to others.</p> <p>(4) An offer made under subsection (2) must remain open for acceptance for not less than 14 days from the date that the offer is made.</p> <p>(5) Nothing in this section prevents the memorandum or articles of a company from modifying the provisions of this section.</p>
Consideration for shares.	<p>37. Subject to section 38, a share may be issued for consideration in any form, including money, a promissory note, real property, personal property (including goodwill and know-how) or a contract for future services.</p>
Shares issued for consideration other than money.	<p>38. (1) Before issuing shares for a consideration other than money, the directors shall pass a resolution stating:</p> <ul style="list-style-type: none"> (a) the amount to be credited for the issue of the shares; (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and (c) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares. <p>(2) Subsection (1) shall not apply to the issue of any bonus shares.</p>
Consent to issue of shares.	<p>39. The issue by a company of a share that:</p> <ul style="list-style-type: none"> (a) increases a liability of a person to the company; or (b) imposes a new liability on a person to the company; <p>is void if that person, or an authorised agent of that person, does not consent in writing to becoming or remaining the holder of the share.</p>
Time of issue.	<p>40. Without prejudice to section 4(b)(i) and section 145(3)(c)(i), a share is deemed to be issued when the name of the shareholder is entered on the register of members.</p>
Lien on shares.	<p>41. (1) Subject to contrary provision in its memorandum or articles, a company shall (unless the directors resolve to the contrary in respect of</p>

any share) have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share and the following provision of this section shall apply.

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

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

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

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

Calls on shares.

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

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

(a) such call may be required to be paid by instalments;

(b) such call may, before receipt by the company of any sum due thereunder, be revoked in whole or part;

(c) payment of such call may be postponed in whole or part;

(d) a person upon whom such a call is made shall remain liable for calls made upon such person notwithstanding the subsequent transfer of the shares in respect of which the call was made;

(e) such call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed; and

(f) the joint holders of a share shall be jointly and severally liable to pay all such calls in respect thereof.

(3) If a call under subsection (1) remains unpaid after it has

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

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

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

Forfeiture of shares.

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

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

(3) The written notice of call referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that, in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

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

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

Variation of class rights.

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

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

(3) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class

of shares contained in a company's memorandum or articles, references to the variation of those rights are to be treated as including references to their abrogation or extinguishment.

Chapter 3 – Transfer of Shares

Transferability of shares.

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

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

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

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

- (a) to become the registered holder of the share by giving notice to the company to that effect; or
- (b) to have some other person registered as the transferee by executing an instrument of transfer in accordance with section 46 even though that person is not a shareholder at the time of the transfer.

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

Method of transfer of shares.

46. (1) Shares are transferred by a written instrument of transfer signed by or on behalf of the transferor and containing the name and business or residential address of the transferee.

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

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

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

transfer.

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

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

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

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

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

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

Transfer of securities without a written instrument.

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

(2) In this section:

- (a) "securities" means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Supervision Act 1988 and other securities of any description;
- (b) "procedures" means the procedures referred to in subsection (3);
- (c) references to title to securities include any legal or equitable interest in securities; and
- (d) references to a transfer of title include a transfer by way of security.

(3) Regulations made under this section may make provision:

- (a) for procedures for recording and transferring title to securities, and
- (b) for the regulation of those procedures and the persons responsible for or involved in their operation.

(4) Regulations made under this section may contain such safeguards as appear to the Treasury appropriate for the protection of investors and for ensuring that competition is not restricted, distorted or prevented.

(5) Regulations made under this section may for the purpose of

enabling or facilitating the operation of the procedures make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures.

(6) Regulations made under this section may include provision for the purpose of giving effect to:

- (a) the transmission of title to securities by operation of law;
- (b) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment or instrument, court order or agreement;
- (c) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled.

(7) Regulations made under this section may make provision with respect to the persons responsible for the operation of the procedures:

- (a) as to the consequences of their insolvency or incapacity, or
- (b) as to the transfer from them to other persons of their functions in relation to the procedures.

(8) Regulations made under this section may for the purposes mentioned above:

- (a) modify or exclude any provision of any enactment or instrument, or any rule of law;
- (b) apply, with such modifications as may be appropriate, the provisions of any enactment or instrument (including provisions creating criminal offences);
- (c) require the payment of fees, or enable persons to require the payment of fees, of such amounts as may be specified in the regulations or determined in accordance with them.

PART III

DISTRIBUTIONS

Meaning of
"solvency test"
and "distribution".

48. In this Act, unless the context otherwise requires:

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

member,

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

Distributions.

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

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

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

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

(2) Where a distribution has been made to a member or members by a company and the company did not, immediately after the distribution, satisfy the solvency test as it applies to the company, then, a director who failed to take reasonable steps to ensure that the distribution was made in accordance with section 49 (or, in the case of a protected cell company, section 118) shall be personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.

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

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

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

Company may acquire its own shares.

51. (1) Subject to this Part and to its memorandum and articles, a company may purchase, redeem or otherwise acquire its own shares for any consideration provided that such transaction does not result in the company contravening section 59.

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

Process for acquisition of own shares.

52. (1) Subject to subsection (3), the directors of a company may only make an offer on behalf of the company to acquire shares issued by the company, if the offer is:

- (a) an offer to all shareholders to acquire shares issued by the company that:
 - (i) would, if accepted, leave the relative rights of the shareholders unaffected; and
 - (ii) affords each shareholder a period of not less than fourteen days within which to accept the offer; or
- (b) an offer to one or more shareholders to acquire shares:
 - (i) to which all shareholders have consented in writing; or
 - (ii) that is permitted by the memorandum or articles and is made in accordance with section 53.

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

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

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

(4) Where a company acquires a share under the provisions of section 159:

- (a) the acquisition is deemed not to be a distribution for the purposes of section 49 or section 118 (as the case may be); and
- (b) sections 52 and 53 do not apply.

Offer to one or more shareholders.

53. (1) The directors of a company shall not make an offer to one or more shareholders under section 52(1)(b) unless they have passed a resolution stating that, in their opinion:

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

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

(3) The directors shall not make an offer to one or more shareholders under section 52(1)(b) if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to

hold the opinions specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed acquisition of shares under section 52(1)(b) on the grounds that:

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

Redemption of shares.

54. (1) If a share is redeemable, then:

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

(2) Notwithstanding any right of a holder of any share to have such share redeemed in accordance with the company's memorandum or articles or otherwise, no share shall be redeemed if, following implementation of such redemption, section 59 would be offended.

Effect of company's failure to redeem or acquire own shares.

55. (1) Where a company:

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

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

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

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

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

- (5) Subsection (4) shall not apply if:
 - (a) the terms of redemption or acquisition provided for the redemption or acquisition to take place at a date later than the date of the commencement of the winding up; or
 - (b) during the period beginning with the date on which the redemption or acquisition was to have taken place and

ending with the commencement of the winding up the company could not at any time have lawfully made the redemption or acquisition.

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

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

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

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

Dividends.

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

Reduction of share capital.

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

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

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

PART IV
MEMBERS

Meaning of "shareholder" and "guarantee member".

58. In this Act, unless the context otherwise requires:

"guarantee member", in relation to a company, means:

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

"shareholder", in relation to a company, means:

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

Company to have one or more members.

59. (1) A company shall at all times have one or more members.

(2) In the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares, at least one of the members must be a shareholder.

(3) A company limited by guarantee and a company limited by shares and by guarantee shall, at all times, have one or more guarantee members.

(4) An unlimited company without shares shall, at all times, have one or more members.

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

Liability of members.

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

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

- (a) any amount unpaid on a share held by the shareholder;
- (b) any liability expressly provided for in the memorandum or articles of the company;
- (c) any liability to repay a distribution under section 50(1); and
- (d) any liability for calls made on the shareholder.

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

Register of members.

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

61. (1) A company shall cause to be kept a register of members containing:

- (a) (in the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares), the names and business or residential addresses of the persons who hold shares in the company;
- (b) (in the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares), the number of each class of shares held by each shareholder;
- (c) (in the case of a company limited by guarantee and a company limited by shares and by guarantee), the names and business or residential addresses of the persons who are guarantee members of the company;
- (d) (in the case of an unlimited company without shares), the names and business or residential addresses of the persons who are members of the company;
- (e) the date on which the name of each member was entered in the register of members; and
- (f) the date on which any person ceased to be a member.

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

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

(4) Regulations may provide for the circumstances in which information relating to persons who are no longer members of a company may be deleted from the register of members.

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

Register of members as evidence of legal title.

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

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

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

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

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

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

Rectification of register of members.

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

(2) If in the opinion of any person:

(a) information that ought to be entered in the register of members under section 61 is omitted from the register or inaccurately entered in the register; or

(b) there is unreasonable delay in entering the information in the register,

such person may apply to the Court for an order that the register be rectified, and the Court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

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

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

(b) between a member or members or an alleged member or members, and the company;

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

Members' resolutions.

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

(a) passed at a meeting of members held pursuant to section 66; or

(b) passed as a written resolution in accordance with section 70.

Votes of members

65. For the purposes of this Act, unless the memorandum or articles make contrary provision:

(a) votes of shareholders shall be counted according to the votes

attached to the shares held by the shareholder voting; and

- (b) a guarantee member and a member of an unlimited company without shares is entitled to one vote on any resolution on which such member is entitled to vote.

Meetings of members.

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

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

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

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

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

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

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

(6) The following apply where shares are jointly owned:

- (a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
- (b) if only one of them is present in person or by proxy, that person may vote on behalf of all of them; and
- (c) if two or more are present in person or by proxy, they may only vote as one.

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

Notice of meetings of members.

67. (1) Subject to a requirement in the memorandum or articles to give longer notice of meetings, a person or persons convening a meeting of members shall give not less than 14 days' notice of the meeting to those persons whose names, on the date the notice is given, appear as

members in the register of members and are entitled to vote at the meeting.

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

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

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

Quorum for meetings of members.

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

Court may call meeting of members.

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

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

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

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

Written resolutions.

70. (1) Any action that may be taken by members of the company at a meeting of members may also be taken by a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice:

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

memorandum or articles.

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

Service of notices on members.

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

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

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

PART V

COMPANY ADMINISTRATION

Chapter 1 – Registered Office and Registered Agent

Registered office.

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

(2) The registered office of a company is:

- (a) the place specified as the company's first registered office in the memorandum filed under section 5(1), section 142(1), section 147(1), section 152(2), section 155(3) or section 160(3), as the case may be; or
- (b) if one or more notices of change of registered office have been filed under section 74, the place specified in the last such notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the memorandum or in any notice filed under section 74 shall be a physical address in the Isle of Man.

Registered agent and annual return.

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

(2) Unless the last registered agent of the company has resigned in accordance with section 75 or ceased to be the company's registered agent in accordance with section 76, the registered agent of a company is:

- (a) the person specified as the company's first registered agent in the memorandum filed under section 5(1), section 142(1), section 147(1), section 152(2), section 155(3) or section 160(3), as the case may be; or
- (b) if one or more notices of change of registered agent have

been filed under section 74, the person specified as the company's registered agent in the last such notice to be registered by the Registrar.

(3) No person shall be, or agree to be, the registered agent of a company unless that person:

- (a) holds a licence granted under the Fiduciary Services Acts 2000 and 2005 which does not exclude acting as registered agent; or
- (b) is not required, whether by exemption or otherwise, to hold a licence under the Fiduciary Services Acts 2000 and 2005 in order to act as registered agent under the terms of such Acts.

(4) Subject to section 76(6), a person who contravenes subsection (3) commits an offence.

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

(6) A company whose registered agent is not required to hold a licence under the Fiduciary Services Acts 2000 and 2005 in order to act as registered agent under the terms of such Acts shall file an annual return in the approved form within one month after each anniversary of the date of that company's incorporation, re-registration or continuation under this Act.

(7) A company to which subsection (6) applies and which contravenes that subsection commits an offence.

Change of
registered office
or registered
agent.

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

(2) A change of registered office or registered agent is effected by filing a notice in the approved form.

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

(4) A notice of change of registered office or registered agent may be filed only by:

- (a) the existing registered agent of the company; or
- (b) an advocate or registered legal practitioner in the Isle of Man acting on behalf of the company for the purposes of filing the notice.

(5) A change of registered office or registered agent takes effect on the registration by the Registrar of the notice filed under subsection (1).

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

Resignation of
registered agent.

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

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

(a) give not less than 8 weeks' written notice of that person's intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3); and

(b) file a copy of the notice provided under paragraph (a).

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

(4) If a company does not change its registered agent in accordance with section 74 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent.

(5) Unless the company has previously changed its registered agent, the resignation of a registered agent is effective 28 days after the notice of resignation is registered by the Registrar.

Registered agent
ceasing to be
eligible to act.

76. (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to hold a licence which permits the person to act as registered agent under the Fiduciary Services Acts 2000 and 2005.

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

(a) a notice:

(i) advising the company that the person concerned is not eligible to be its registered agent;

(ii) advising the company that the company shall appoint a new registered agent within 12 weeks of the date of the notice; and

(iii) specifying the date on which the person shall cease to be the registered agent of the company, if the company has not previously changed its registered agent; and

(b) a list of persons who are licensed under the Fiduciary Services Acts 2000 and 2005 to act as registered agent.

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

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

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

offence.

(6) A person does not commit an offence under section 73(4) by reason only of the fact that:

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

Chapter 2 – Company Records

Documents to be kept at office of registered agent.

77. (1) A company shall keep the following documents at the office of its registered agent:

- (a) copies of the memorandum and articles of the company;
- (b) the register of members maintained under section 61 or a copy of the register of members;
- (c) the register of directors maintained under section 99 or a copy of the register of directors;
- (d) the register of charges maintained under section 135(1) or a copy of such register of charges;
- (e) copies of all notices and other documents filed by the company pursuant to this Act in the previous 6 years; and
- (f) copies of any financial statements that it is required to prepare under this Act.

(2) Where a company keeps a copy of the register of members or the register of directors at the office of its registered agent, it shall:

- (a) within 14 days of any change in the register, notify the registered agent, in writing, of the change; and
- (b) provide the registered agent with a written record of the physical address of the place or places at which the original register of members or the original register of directors is kept.

(3) Where the place at which the original register of members or the original register of directors is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

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

Other records to be maintained by company.

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

- a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section 83; and

- (b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section 83.

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

(3) Where the place at which any records specified under subsection (1) is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

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

Companies to keep accounting records.

79. (1) A company shall keep accounting records that:

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

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

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

Form of records.

80. The records required to be kept by a company under this Act shall be kept:

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

Inspection of records.

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

(2) Subject to subsection (3), a member is entitled, on giving written notice to the company, to inspect:

- (a) copies of the memorandum and articles;
- (b) the register of members or a copy thereof;
- (c) the register of directors or a copy thereof;
- (d) the register of charges maintained under section 135 or a copy thereof; and
- (e) the accounting records maintained under section 79 or a copy thereof,

and to make copies of or take extracts from the documents and records.

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

(4) The directors shall, as soon as reasonably practicable, notify the member of any exercise of their powers under subsection (3).

(5) A member who is refused permission to inspect a document or who is permitted to inspect a document subject to limitations, may apply to the Court for an order that such member should be permitted to inspect the document or to inspect the document without limitation.

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

(7) Officers of the Commission and the Attorney General (or any person authorised in writing by the Attorney General) shall also have the rights of inspection set out in subsection (1).

Service of process
etc. on company.

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

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

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

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

Books, records
and common seal.

83. (1) A company shall keep:

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

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

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

Chapter 3 – General Provisions

Contracts and execution of documents.

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

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

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

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

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

Contracts before incorporation.

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

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

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

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

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

Note and bills of exchange.

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

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

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

Power of attorney.

87. (1) Subject to its memorandum and articles, a company may, by an instrument in writing executed in accordance with section 84(1) or (3), appoint a person as its attorney either generally or in relation to a specific matter.

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

Authentication or attestation of documents.

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

PART VI DIRECTORS

Chapter 1 – Management by Directors

Management by directors.

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

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

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

(4) A company must have one or more directors.

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

(6) Subject to section 91, any individual or any body corporate or other legal person may be a director of a company.

(7) A body corporate or other legal person (not being an individual) may only be a director of a company if, and for so long as, the identities of the individual or individuals from time to time exercising the functions of that body corporate or other legal person as director are disclosed in writing to the registered agent of the company, and that body corporate or other legal person has at least one individual acting as a director or similar officer of that body corporate or other legal person.

Committees of directors.

90. (1) Subject to the memorandum and articles and to subsection (2), the directors may:

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

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

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

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

Chapter 2 – Appointment, Retirement and Resignation of Directors

Persons disqualified from acting as directors.

91. (1) The following are disqualified from appointment as a director of a company and, if already so appointed, from continuing to act as a director:

- (a) an individual who is under 18 years of age;
- (b) a person who is a disqualified person;
- (c) an undischarged bankrupt;
- (d) a person who, in respect of a particular company, is disqualified by the memorandum or articles from being a director of the company;
- (e) in the case of a director which is a body corporate or other legal person (not being an individual), if the requirements specified in section 89(7) are not met; or
- (f) a person who ceases to exist (by way of dissolution or otherwise).

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

Consent to act as director.

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

Appointment of directors.

93. (1) The members of a company shall, within 28 days of the date of incorporation of the company, by resolution, appoint one or more persons as the first directors of the company.

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

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

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

(4) Without prejudice to section 917(2), a director holds office until the earliest of the following to occur:

- (a) the cessation of such director's term of office;
- (b) such director's death, resignation or removal;
- (c) such director becomes disqualified from acting as a director pursuant to section 91(1).

Removal of directors.

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

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

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

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

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

Resignation of directors.

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

Liability of former directors.

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

Power of court to grant relief in certain cases.

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

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against that person in respect of any negligence, default, breach of duty or breach of trust, such person may apply to the Court for relief, and the Court on any such application shall have the same power to relieve that person as under this section it would have had if it had been a court before which proceedings

against that person for negligence, default, breach of duty or breach of trust had been brought.

- (3) The persons to whom this section applies are the following:
- (a) directors of a company;
 - (b) managers of a company;
 - (c) officers of a company;
 - (d) persons employed by a company as auditors.

Validity of acts of director.

98. The acts of a person as a director are valid notwithstanding that:

- (a) the person's appointment as a director was defective; or
- (b) the person is disqualified to act as a director under section 91.

Register of directors.

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

- (a) the names and business or residential addresses of the persons who are directors of the company;
- (b) the date on which each person whose name is entered in the register was appointed as a director of the company; and
- (c) the date on which each person named as a director ceased to be a director of the company.

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

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

Emoluments and expenses of directors.

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

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

Chapter 3 – Directors' Interests

Directors' appointments and interests.

101. Provided that a director has disclosed any interest in accordance with section 102, a director notwithstanding such director's office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested; and

- (c) shall not, by reason of his office, be accountable to the company for any benefit which such director derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

Disclosure of interests.

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

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

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

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

Director disclosing interest may vote and count in quorum.

103. Subject to contrary provision in the memorandum or articles of a company, a director who has disclosed an interest in a transaction in accordance with section 102 shall be counted in the quorum, and may vote, in relation to any resolution of the directors concerning such transaction.

Chapter 4 – Proceedings of Directors and Miscellaneous Provisions

Meetings of directors.

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

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

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

Notice of meetings of directors.

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

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

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

Quorum for meetings of directors.

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

Resolutions of directors.

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

- (a) passed at a meeting of directors held under section 104; or
- (b) passed as a written resolution under subsection (3).

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

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

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

Alternates for directors.

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

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

(3) Save as otherwise provided in the memorandum or articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for such alternate director's acts and defaults and shall not be deemed to be the agent of such alternate director's appointor.

Agents.

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

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

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

Indemnification.

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

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

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

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

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

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

Insurance.

111. A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director or officer of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 110.

PART VII

PROTECTED CELL COMPANIES

Chapter 1 – Formation of Protected Cell Companies

Interpretation of this Part.

112. (1) In this Part:

“receiver” has the meaning given in section 124(1); and

“receivership order” has the meaning given in section 124(1).

Protected cell companies.

113. (1) Subject to subsections (2), (3) and (8), a company limited by shares may be incorporated as a protected cell company under Chapter 1 of Part I of this Act.

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

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

(4) Subject to subsections (2), (3) and (8), a company limited by shares that is not a PCC may apply to the Registrar to be converted into a PCC.

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

(a) notice pursuant to section 9(a) of an amendment of the company’s memorandum to comply with subsection (3) and to adopt new articles;

(b) a restated memorandum and articles under section 9(b) incorporating the amendments specified in the notice referred to in paragraph (a); and

(c) an application pursuant to section 14 to amend the name of the company to comply with subsection (3).

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

(a) register the documents; and

(b) issue a certificate of conversion in the approved form to the company.

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

(8) A company cannot be incorporated as, nor can a company that is not a PCC be converted into, a PCC unless:

- (a) it carries on, or will when incorporated or converted (as the case may be) carry on, insurance business within the meaning of the Insurance Act 1986; or
- (b) it constitutes, or will when incorporated or converted (as the case may be) constitute, an international scheme within the meaning of section 11(5) of the Financial Supervision Act 1988 (with the exception of a scheme which is exempted from section 11 of that Act by subsection (7) of that section but including, for the avoidance of doubt, a professional investor fund within the meaning given in article 2(1) of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999 and an experienced investor fund within the meaning given in article 2(1) of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999; or
- (c) it is (or will be) of such class or description, or carries on (or will carry on) such business or class of business as may be prescribed by regulations.

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

Fundamental nature of a PCC.

114. (1) A PCC is a single legal person.

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

Chapter 2 – Cells

Creation of cells and cellular and non-cellular assets.

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

(2) Each cell of a PCC must have its own distinct name or designation.

(3) The assets of a PCC are either cellular assets or non-cellular assets.

(4) The non-cellular assets of a PCC are the assets of the company which are not cellular assets.

(5) The cellular assets of a PCC are the assets of the company attributable to the cells of the company.

Cellular and non-cellular assets: directors' duties.

116. (1) A PCC shall:

- (a) keep cellular assets separate and separately identifiable from non-cellular assets; and
- (b) keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(2) Subsection (1) does not prevent the directors arranging for cellular assets and non-cellular assets to be held by or through a trustee, custodian or nominee.

(3) There is no default in complying with subsection (1) if cellular assets or non-cellular assets, or a combination of both, are collectively invested, or collectively managed, on behalf of a company if the assets in question remain separately identifiable in accordance with that subsection.

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

Chapter 3 – Cell Share Capital and Distributions

Cell share capital.

117. (1) A PCC may create and issue shares in respect of any of its cells (“cell shares”).

(2) The proceeds of the issue of cell shares (“cell share capital”) are cellular assets attributable to the cell in respect of which the cell shares were issued.

(3) The proceeds of the issue of shares other than cell shares are non-cellular assets.

Cellular and non-cellular distributions.

118. (1) Subject to section 50, the directors of a PCC may authorise a distribution in respect of a cell (“cellular distribution”) at any time if they are satisfied, on reasonable grounds, that the PCC will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (2).

(2) In determining whether a PCC satisfies the solvency test under subsection (1) for the purpose of making a cellular distribution in respect of a cell, no account is to be taken of:

- (a) the assets and liabilities, attributable to any other cell of the company; or
- (b) non-cellular assets and liabilities of the company of the company.

(3) Subject to section 50, the directors of a PCC may authorise a distribution in respect of its non-cellular assets and liabilities (a “non-cellular distribution”) at any time if they are satisfied, on reasonable grounds, that the PCC will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (4).

(4) In determining whether a PCC satisfies the solvency test under subsection (3) for the purposes of making a non-cellular distribution, no account need be taken of the assets and liabilities of any cell of the PCC, save in the respect of any liability arising under section 120(1)(b).

Chapter 4 – Assets and Liabilities

Attribution of non-cellular assets and liabilities.

119. (1) Liabilities of a PCC not otherwise attributable to any of its cells are to be discharged from the company’s non-cellular assets.

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

Liability of cellular and non-cellular assets.

120. (1) If any liability arises which is attributable to a particular cell of a PCC:

- (a) the cellular assets attributable to that cell will be primarily liable;
 - (b) the company's non-cellular assets will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted; and
 - (c) the liability will not be a liability of any cellular assets not attributable to the relevant cell.
- (2) Subsection (1) is subject to subsections (3) to (8).
- (3) If the company has agreed with the person in respect of whom the liability arises that a liability is the liability solely of:
- (a) the company's non-cellular assets; or
 - (b) the cellular assets attributable to a particular cell of the company,
- subsection (1) will have effect subject to that agreement.
- (4) In the case of loss or damage which is attributable to a particular cell of a PCC and which is caused by fraud, the loss or damage shall be the liability solely of the company's non-cellular assets.
- (5) Subsection (4) is without prejudice to any liability of any person other than the company.
- (6) The fraud referred to in subsection (4) does not include the fraud of any person making a claim against the company or any of its assets or of that person's servants, employees, officers or agents.
- (7) The liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a PCC will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b).
- (8) The liabilities of the company's non-cellular assets will reduce proportionally until the value of the aggregate liabilities equals the value of those assets but this subsection will not apply in any situation in which any of the liabilities of the company's non-cellular assets arises from fraud or by reason of a special agreement such as is referred to in subsection (3).

Disputes as to liability attributable to cells.

- 121.** (1) In the event of any dispute as to:
- (a) whether any right is or is not in respect of a particular cell;
 - (b) whether any creditor is or is not a creditor in respect of a particular cell;
 - (c) whether any liability is or is not attributable to a particular cell;
 - (d) the amount to which any liability is limited,

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

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

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

Position of
creditors.

122. (1) The rights of creditors of a PCC shall correspond with the liabilities provided for in section 120.

(2) No such creditor shall have any rights other than the rights referred to in this section and in sections 120 and 123.

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

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

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

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

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

- (a) certify the value of the assets lost to the cell affected; and
- (b) transfer or pay, from the cellular or non-cellular assets to

which the liability was attributable to the cell affected, assets or sums sufficient to restore to the cell affected the value of the assets lost.

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

Recourse to cellular assets by creditors.

123. Without prejudice to the provisions of sections 120 and 122, cellular assets attributable to a cell of a PCC:

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

Chapter 5 – Receivership Orders

Receivership orders in relation to cells.

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

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

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

- (3) A receivership order:
 - (a) must not be made if:
 - (i) a liquidator has been appointed to act in respect of the PCC; or
 - (ii) the PCC has passed a resolution for voluntary winding up; and

- (b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the PCC.
- (4) A receivership order may be made in respect of one or more cells.
- (5) A receivership order does not affect prior acts.
- (6) No resolution for the voluntary winding up of a PCC any cell of which is subject to a receivership order shall be effective without leave of the Court.

Applications for receivership orders.

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

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

(2) The Court, on hearing an application:

- (a) for a receivership order; or
- (b) for leave, under section 124(6), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

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

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

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

Functions of receiver and effect of receivership order.

126. (1) The receiver of a cell:

- (a) shall, within 28 days from the date of the receivership order, file a certified copy of the order;
- (b) may do anything necessary for the purposes set out in section 124(1); and
- (c) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The receiver may at any time apply to the Court:

- (a) for directions as to the extent or exercise of any function or power;

- (b) for the receivership order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of the receivership.

(3) In exercising any functions the receiver is the agent of the PCC, and does not incur personal liability except to the extent that the receiver is fraudulent, reckless or grossly negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within the receiver's powers.

(5) When an application has been made for, and during the period of operation of, a receivership order:

- (a) no proceedings may be instituted or continued by or against the PCC in relation to the cell in respect of which the receivership order was made; and
- (b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the cell in respect of which the receivership order was made,

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

(6) During the period of operation of a receivership order:

- (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made; and
- (b) the receiver of the cell is deemed to be a director of the PCC in respect of the non-cellular assets of the company, unless there are no creditors in respect of that cell entitled to have recourse to the company's non-cellular assets.

(7) A person who contravenes subsection 1(a) commits an offence.

Discharge and variation of receivership orders.

127. (1) The Court cannot discharge a receivership order unless the Court is satisfied that the purpose for which the order was made:

- (a) has been achieved or substantially achieved; or
- (b) is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a cell of a PCC on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell shall be thereby deemed extinguished.

(4) Subsection (3) shall not affect or extinguish any right or remedy of a creditor against any other person, including any surety of the PCC.

(5) Subject to the provisions of:

- (a) this Part and any rule of law as to preferential payments; and
- (b) any agreement between the PCC and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors,

the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made must, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part, be realised and applied proportionately in satisfaction of the company's liabilities attributable to that cell.

(6) Any surplus must thereafter be distributed (unless the memorandum or articles provide otherwise):

- (a) among the holders of the cell shares or the persons otherwise entitled to the surplus; or
- (b) where there are no cell shares and no such persons, among the holders of the non-cellular shares or the persons otherwise entitled to any surplus non-cellular assets,

in each case according to their respective rights and interests in or against the company.

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

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

Remuneration of receiver.

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

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

Chapter 6 – Liquidation

Provisions in relation to liquidation of PCC.

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

- (a) must deal with the company's assets in accordance with the requirements of section 116(1);
- (b) in discharge of the claims of creditors of the PCC, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

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

Chapter 7 – General Provisions

Company to inform persons that they are dealing with PCC.

- 130.** (1) A PCC shall:
- (a) inform any person with whom it enters into any transaction in respect of a particular cell that the company is a PCC; and
 - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting.
- (2) A PCC that contravenes subsection (1) commits an offence.

Security interests in respect of cell assets.

- 131.** (1) A company may create any security interest in respect of assets attributable to a particular cell in relation to:
- (a) any liability attributable to that cell;
 - (b) any liability that is not attributable to that cell.
- (2) Without affecting the generality of section 114:
- (a) Part VIII; and
 - (b) Part VI of the Companies Act 1931 as it applies to companies pursuant to section 190,

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

Savings for directors' functions.

- 132.** (1) This Part does not affect the functions of the directors of a PCC in respect of the affairs of the company including the due administration of the affairs of each cell except as expressly provided.
- (2) Subsection (1) does not affect the powers of delegation by directors.

Saving for internal arrangements.

- 133.** (1) This Part does not prevent, in the ordinary course of business of a PCC, arrangements:
- (a) as between cells; or
 - (b) as between cells and the PCC,

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

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

- (3) This section does not affect the generality of section 114.

PART VIII
REGISTRATION OF CHARGES

Interpretation of this Part.

134. (1) In this Part:

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

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

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

Company to keep register of charges.

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

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

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

(3) Where:

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

the company shall amend its register of charges accordingly.

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

Registration of charges.

136. (1) Where a company creates a charge over any company property an application to the Registrar to register the charge shall be made within 28 days after the date of its creation by:

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

(2) An application under subsection (1) is made by filing an application in the approved form containing the details specified in paragraphs (a) to (e) of section 135(1).

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

(4) Upon receipt of an application under subsection (2), the Registrar shall forthwith:

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

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

(6) Subject to section 138, any charge created by a company over any company property shall be void against the liquidator and any creditor of the company unless it is registered pursuant to this section.

Variation of
registered charge.

137. (1) Where there is a variation in the terms of a charge registered under section 136 or 138, application for the variation to be registered may be made by:

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

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

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

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

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

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

Late registration
of charges.

138. (1) Where a company creates a charge over any company property and such charge is not registered pursuant to section 136, an application to the Registrar may be made at any time prior to the commencement of the winding up of the company by:

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

(2) An application under subsection (1) is made by filing an application in the approved form containing the details specified in paragraphs (a) to (e) of section 135(1).

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

- (a) register the details contained in the application form in the register of registered charges kept by the Registrar for that company pursuant to section 135(3);
- (b) issue a certificate of registration of the charge and send a copy to the applicant; and
- (c) state in the register of registered charges and on the certificate of registration the date on which the charge was registered and that it was registered pursuant to this section.

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

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

Charge ceasing to
affect company's
property.

139. (1) Where a charge registered under section 136 or 138 ceases to affect any company property the company shall file a notice specifying the company property that has ceased to be affected by the charge in the approved form.

(2) A notice filed under subsection (1) shall be signed by or on behalf of the company and shall be accompanied by written consent on the part of the chargee as to the release of the charge to which it relates.

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

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

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

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

Registration of enforcement of security.

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

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

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

PART IX

RE-REGISTRATION

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

Power of company to re-register.

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

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

Application to re-register.

142. (1) An application pursuant to section 141 shall be accompanied by:

- (a) a statutory declaration in the approved form made by all the directors of the company stating that the company satisfies the solvency test;
- (b) a new memorandum signed by or on behalf of each member of the company; and
- (c) if the articles of the company upon re-registration are to differ from the relevant model articles or if the company is to be re-registered as an unlimited company without shares, articles signed by or on behalf of each member of the company.

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

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

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

(3) The memorandum shall state, in respect of each person agreeing to take one or more shares on the re-registration of the company pursuant to section 142(2)(g):

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

(4) The memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

(5) Where:

- (a) a limited company applies to re-register as an unlimited company pursuant to section 141; or
- (b) an unlimited company applies to re-register as a limited company pursuant to section 141,

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

(6) Subject to subsection (8), subsection (7) applies with effect from the date of a company's re-registration in any case where articles ("the proposed articles") were delivered under section 142(1)(c).

(7) If the proposed articles:

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

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

(8) Subsection (7) does not apply where the company is to be re-registered as an unlimited company without shares (in respect of which there are no relevant model articles).

Restrictions on re-registration of company with shares.

143. A company limited by shares, a company limited by shares and by guarantee or an unlimited company with shares may only re-register pursuant to section 142 as a company limited by guarantee or an unlimited company without shares if upon re-registration it shall have no shares in issue.

Re-registration.

144. (1) Upon receipt of the documents specified in section 142(1), the Registrar shall:

- (a) register the new memorandum and articles (if any) delivered pursuant to section 142(1); and
- (b) issue a certificate of re-registration in the approved form.

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

Consequences of re-registration.

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

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

- (a) to create a new legal entity: or
 - (b) to prejudice or affect the continuity of the company.
- (3) Upon re-registration of a company under this Chapter:

- (a) the new memorandum filed pursuant to section 142(1)(b) shall be the memorandum of the company to the exclusion of the memorandum in force immediately prior to its re-registration;

- (b) the articles of the company in force immediately prior to its re-registration shall cease to be the articles of the company and the proposed articles (if any) or the relevant model articles (if no proposed articles have been delivered pursuant to section 142(1)(c)) shall be the articles of the company; and
- (c) each person who agreed in the new memorandum to take one or more shares in the company:
 - (i) is deemed to have been issued with the number of shares that such person is specified in the new memorandum as having agreed to take; and
 - (ii) becomes liable to pay the amount that such person is specified in the new memorandum as having agreed to pay for those shares.

Chapter 2 – Re-registration of a 1931 Act Company

Power of 1931 Act company to re-register.

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

Application to re-register a 1931 Act company.

147. (1) An application pursuant to section 146 shall be accompanied by:

- (a) a document in the approved form signed by the person named in the new memorandum referred to in paragraph (b) as the first registered agent of the company, signifying such person's consent to act as registered agent;
- (b) certified copies of:
 - (i) a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto; and
 - (ii) a resolution of each class of members (if any) passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto,

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

- (c) a new memorandum complying with subsection (2);
- (d) if the articles of the company upon re-registration are to differ from the relevant model articles or if the company is to be re-registered as a protected cell company or an unlimited company without shares, new articles.

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

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

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

(3) The memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

(4) Subject to subsection (6), subsection (5) applies with effect from the date of a company's re-registration in any case where articles ("the proposed articles") were delivered under section 147(1)(d).

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

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

(6) Subsection (5) does not apply where the company is to be re-registered as a protected cell company or an unlimited company without shares (in respect of which there are no relevant model articles).

company.

the Registrar shall:

- (a) register the new memorandum and articles (if any) delivered pursuant to section 147(1); and
- (b) allot a unique number to the company; and
- (c) issue a certificate of re-registration in the approved form.

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

Consequences of re-registration of a 1931 Act company.

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

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

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

- (a) the new memorandum filed pursuant to section 147(1)(c) shall be the memorandum of the company to the exclusion of the memorandum in force immediately prior to its re-registration; and
- (b) the articles of the company in force immediately prior to its re-registration shall cease to be the articles of the company and the proposed articles (if any) or the relevant model articles (if no proposed articles have been delivered pursuant to section 147(1)(d)) shall be the articles of the company.

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

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

PART X

SCHEMES OF MERGER, CONSOLIDATION AND ARRANGEMENT AND RIGHTS OF DISSENTERS

Chapter 1 – Mergers and Consolidations

Interpretation of this Part.

150. In this Part:

“consolidated company” means the new company that results from the consolidation of two or more constituent companies;

“consolidation” means the consolidation of two or more constituent companies into a new company;

“constituent company” means a company that is participating

in a merger or consolidation with one or more other companies;

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“surviving company” means the constituent company into which one or more other constituent companies are merged.

Approval of merger or consolidation.

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

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

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

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

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

(4) In the case of a consolidation, the scheme of consolidation shall have annexed to it a form of memorandum for the consolidated company complying with section 153 and (if desired) articles to be adopted by the consolidated company.

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

same class.

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

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

Registration of
merger or
consolidation.

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

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

- (a) certified copies of all resolutions of members specified by section 151(6)(a) and (b);
- (b) statutory declarations by all the directors of each constituent company that such constituent company complies with the requirements of section 151(2);
- (c) a copy of a notice sent to each member of the company and published in such manner as may be prescribed by regulations at least 21 days prior to the application to the effect that the company intends to participate in the proposed merger or consolidation stating that the scheme of merger or consolidation may be inspected at such office of the registered agent of each constituent company at such reasonable times as may be specified;
- (d) the written consent to the making of the application by the holders of all charges for the time being registered in respect of each constituent company under section 135 of this Act;
- (e) in the case of a consolidation, the memorandum for the

consolidated company complying with section 153 and the articles (if any) to be adopted by the consolidated company, in each case signed by or on behalf of each constituent company; and

- (f) in the case of a consolidation, a document in the approved form signed by the person named in the memorandum of the consolidated company as the first registered agent of that company, signifying his consent to act as registered agent.

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

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

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

Memorandum of consolidated company.

153. (1) The memorandum of a consolidated company under this Act shall state:

- (a) the name of the consolidated company;
- (b) whether the consolidated company is:
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited by shares and guarantee;
 - (iv) an unlimited company with shares; or
 - (v) an unlimited company without shares;
- (c) the address of the first registered office of the consolidated company in the Isle of Man;
- (d) the name of the first registered agent of the consolidated company in the Isle of Man;

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

(2) The memorandum of a consolidated company may contain a statement specifying the purposes for which the consolidated company is established or the business, activities or transactions which the consolidated company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the consolidated company is established.

Effect of merger or consolidation.

154. (1) A merger or consolidation is effective on the date of the certificate of merger or consolidation issued by the Registrar pursuant to section 152(3)(d).

- (2) As soon as a merger or consolidation becomes effective:
 - (a) in the case of a merger, the memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the articles of merger;
 - (b) in the case of a consolidation, the memorandum and articles (if any) delivered pursuant to section 152(2)(e), are the memorandum and articles of the consolidated company;
 - (c) assets of every description, including *choses in action* and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company (as the case may be); and
 - (d) the surviving company or the consolidated company (as the case may be) is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs:
 - (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause of action existing, against a constituent company or against any member, director or agent thereof, is released or impaired by the merger or consolidation; and
 - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director or agent thereof, are abated or discontinued by the merger or consolidation, but:
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member,

director, officer or agent thereof, as the case may be;
or

- (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the register of companies:
 - (a) any constituent company that is not the surviving company in a merger; or
 - (b) any constituent company that participates in a consolidation.
- (5) If a company has been struck off the register of companies under subsection (4) it shall thereupon be deemed to have been dissolved.

Chapter 2 – Arrangements

Power to enter
into
arrangements.

155. (1) In this Chapter, the expression “arrangement” includes, without limitation, the following:

- (a) any compromise;
 - (b) any reorganisation or reconstruction of a company including, without limitation any reorganisation of its share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of those methods;
 - (c) any amalgamation of two or more companies;
 - (d) any merger or consolidation of two or more companies;
 - (e) any amendment to the memorandum or articles of a company;
 - (f) a separation of two or more businesses carried on by a company;
 - (g) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that person, or money or other assets, or a combination thereof;
 - (h) a dissolution of a company incorporated under this Act; and
 - (i) any combination of any of the things specified in paragraphs (a) to (h).
- (2) Where an arrangement is proposed between two or more companies or between a company and its creditors or any class of them, or between the company and its members or any class of them, or between any of the foregoing, the directors of each company that proposes to participate in the arrangement shall approve a written scheme of arrangement containing, as the case requires:

- (a) the name of each company that proposes to participate in the arrangement and, where the arrangement involves a merger or consolidation, the name of the surviving company or the

consolidated company;

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

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

- (a) a form of memorandum for the consolidated company complying with section 153 and (if desired) articles to be adopted by the consolidated company; and
- (b) a document in the approved form signed by the person named in the memorandum referred to in paragraph (a) as the registered agent signifying such person's consent to act as registered agent.

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

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

Provisions for
facilitating
arrangements.

156. (1) Where an application is made to the Court under section 155 for an order sanctioning an arrangement proposed between any such persons as are mentioned in that section, and it is shown to the Court that the arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation, merger or consolidation of any two or more companies, and that under the scheme:

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

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

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

- (a) the transfer to the transferee company of the whole or any

part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the merger of any two or more companies;
- (e) the consolidation of any two or more companies;
- (f) the dissolution, without winding-up, of any transferor company or any constituent company that it not the surviving company in a merger or any constituent company that participates in a consolidation;
- (g) the provision to be made for any persons, who within such time and in such manner as the court direct, dissent from the arrangement under section 159;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction, amalgamation, merger or consolidation shall be fully and effectively carried out.

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

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

Registration of
Court orders.

157. (1) Where an order is made under section 155 or 156, each company to which the arrangement relates shall file a certified copy thereof, together with a copy of the scheme of arrangement and all documents required to be annexed thereto (if any), with the Registrar within 7 days after the making of the order.

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

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

- (a) register the documents specified in subsection (1) on the file of each company to which the arrangement relates;
- (b) in the case of an arrangement involving a merger or consolidation, issue a certificate of merger or consolidation in the approved form;
- (c) in the case of an arrangement involving a merger, register

any amendment to the memorandum or articles of the surviving company;

(d) in the case of an arrangement involving a consolidation:

(i) register the memorandum and articles (if any) of the consolidated company;

(ii) allot a unique number to the consolidated company; and

(iii) issue a certificate of incorporation of the consolidated company;

(e) strike off the register of companies:

(i) any transferor company that is ordered to be dissolved pursuant to the order;

(ii) in the case of an arrangement involving a merger, any constituent company that is not the surviving company; and

(iii) in the case of an arrangement involving a consolidation, any constituent company that participates therein.

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

(5) An order made under section 155 or 156 shall have no effect until the requirements of this section have been complied with in full.

Chapter 3 – Dissenting Shareholders

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

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

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

(3) Where a notice is given under subsection (1), the transferee shall, unless on an application made to the Court by the dissenting shareholder within 28 days from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee or such terms as may be permitted by a variation under subsection (7).

(4) Where a notice has been given by the transferee under subsection (2) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee shall, on the expiration of 28 days from the date on which the notice has been given,

or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee for the shares which by virtue of subsection (3) the transferee is entitled to acquire, and the transferor company shall thereupon register the transferee as the holder of those shares.

(5) Any sums received by the transferor company under subsection (4) shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the person or persons entitled to the shares in respect of which such sums or other consideration were received.

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

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

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

Rights of dissenters.

159. (1) A member of a company is entitled to payment of the fair value of such member’s shares upon dissenting from:

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

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

(3) Within 21 days immediately following the date on which the vote of members authorising the action is taken, or the date on which

written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented in writing to, the proposed action.

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

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

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

(7) If, within 28 days immediately following the date on which an offer is made under subsection (6), the company making the offer and the dissenting member agree upon the price to be paid for that member's shares, the company shall pay to the member the amount in money upon the surrender of any certificates representing such shares.

(8) If the company and a dissenting member fail, within the period of 28 days referred to in subsection (7), to agree on the price to be paid for the shares owned by the member, within 21 days immediately following the date on which the period of 28 days expires, the following shall apply:

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraisers together shall designate an appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
- (d) the company shall pay to the member the amount in money upon the surrender by the member of any certificates representing that member's shares.

(9) Shares acquired by the company pursuant to subsection (7) or (8) shall be cancelled.

PART XI
CONTINUATION

Chapter 1 – Continuation of Foreign Companies

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

160. (1) Subject to subsection (2), a foreign company may apply to the Registrar under this Chapter of this Part for consent to be continued as a company incorporated under this Act.

(2) A foreign company may not apply to be continued as a company incorporated under this Act if:

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

(3) An application for consent to be continued in the Isle of Man shall be in the approved form and shall be accompanied by:

- (a) a document in the approved form signed by the person named in the memorandum referred to in paragraph (b) as the first registered agent of the company, signifying such person's consent to act as registered agent;
- (b) a memorandum complying with subsection (4);
- (c) if the articles of the company that are to apply to it upon continuance in the Isle of Man are to differ from the relevant model articles or if the company is a protected cell company or an unlimited company without shares, articles signed by or on behalf of the person submitting the application;
- (d) a statutory declaration in the approved form made by the person making the application stating that, in such person's opinion, the foreign company complies with the requirements of subsection (2);
- (e) proof to the satisfaction of the Registrar that the foreign company has obtained all necessary authorisations required under the laws of the country in which it was incorporated to enable it to make the application;
- (f) particulars in the form prescribed by section 136(2) of all charges (if any) created by the foreign company to which section 135 would apply if the company had been

incorporated under this Act as at the dates of their respective creation;

(g) the written consent to the making of the application by the holders of all charges referred to in paragraph (f).

(4) The memorandum of a company continuing under this Act shall state:

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

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

(c) the jurisdiction in which the company is incorporated at the date of its application;

(d) the date on which it was incorporated in the jurisdiction specified in paragraph (c).

(e) whether the company is:

(i) a company limited by shares;

(ii) a company limited by guarantee;

(iii) a company limited by shares and guarantee;

(iv) an unlimited company with shares; or

(v) an unlimited company without shares;

(f) the address of the first registered office of the company in the Isle of Man;

(g) the name of the first registered agent of the company in the Isle of Man;

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

(i) in the case of a protected cell company, that the company is a protected cell company.

(5) The memorandum may contain a statement specifying the purposes for which the company is established or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) upon such purposes, business, activities or transactions for which the company is established.

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

Consent.

161. (1) If the Registrar is satisfied that the proposed name of the

company complies with section 11 and, if appropriate, section 13 and is a name under which the company could be registered under section 12, upon receipt of the documents specified in section 160(3), the Registrar shall grant written consent in the approved form.

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

Registration.

162. (1) During the period mentioned in section 161(2) and subject to the provisions of that subsection, a foreign company may deliver to the Registrar a statutory declaration in the approved form (dated not more than 7 days before such delivery) made by the person making the application that there has been no material change in the information contained in the documents submitted with the application.

(2) On delivery of the statutory declaration under subsection (1), the Registrar shall:

- (a) register the memorandum and articles (if any) delivered pursuant to section 160(3);
- (b) allot a unique number to the company;
- (c) issue a certificate of in such form as may be required by regulations; and
- (d) enter in the register of charges under section 136 the particulars of charges delivered under section 160(3)(f) and issue a certificate under section 136 in respect of each such charge.

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

Effect of
continuance.

163. (1) On the date of the certificate of continuation under section 162(2)(c) the foreign company will become a company to which this Act and all other laws of the Isle of Man apply as if it was incorporated under this Act.

(2) The provisions of this Act relating to a certificate of incorporation shall, with the necessary modifications, apply to a certificate of continuation under section 162(2)(c).

(3) Without prejudice to the generality of subsection (1), where particulars of an existing charge have been delivered to the Registrar under section 160(3)(f), that charge shall be deemed to have been registered in compliance with section 136.

Consequences of
continuance of
foreign company.

164. (1) Upon continuance of a foreign company as a company under this Act:

- (a) the property of the foreign company continues to be the property of the continued company;
- (b) the continued company continues to be liable for the obligations of the foreign company;

- (c) any existing cause of action, claim or liability to prosecution in respect of the foreign company is unaffected;
- (d) any civil, criminal or administrative action or proceeding pending by or against the foreign company is unaffected; and
- (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign company may be enforced by or against the continued company.

(2) The continuance of a foreign company under this Part shall not be deemed to:

- (a) create a new legal entity, or
- (b) prejudice or affect the continuity of the body corporate which was formerly a foreign company and becomes a continued company.

(3) The Court shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of the Isle of Man a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the foreign company.

(4) Notwithstanding section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968, Part I of that Act applies in respect of judgments of any court outside the Island if:

- (a) the judgment debtor is a foreign company which has become a continued company; and
- (b) the judgment is given (whether before or after the commencement of this section) in proceedings in respect of a cause of action arising before the date of the certificate of continuance issued in respect of the continued company under section 162(2)(c); and
- (c) at the time when the cause of action arose, the company was incorporated in, or had its principal place of business in the country of the relevant court; and
- (d) the judgment is final and conclusive as between the parties to it; and
- (e) there is payable under the judgment a sum of money.

(5) For the purposes of subsection (4)(d), a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(6) Subsection (4) applies in respect of judgments for taxes or other charges of a like nature or in respect of a fine or other penalty as it applies in respect of any other judgment under which there is payable a sum of money.

(7) Except as provided by subsection (8), section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 shall not apply in respect of any judgment to which subsection (4) applies.

(8) Where, apart from this section, Part I of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies to a judgment of any court, this section shall be treated as additional to and not in derogation of such application of that Part.

Chapter 2 – Discontinuance of Isle of Man Companies

Application for consent to discontinuance.

165. (1) Subject to subsection (2), a company may apply to the Registrar for consent to be continued in a country or territory outside the Isle of Man as if it had been incorporated under the laws of that other country or territory and to be discontinued under this Act.

(2) A company may not apply to discontinue as a company incorporated under this Act if:

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

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

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

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

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

section 135;

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

Grant of consent.

166. (1) Upon receipt of the documents specified in section 165(3) the Registrar shall grant written consent in the approved form.

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

Documents to be filed.

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

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

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

Effect of discontinuance.

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

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

(3) Where a company is continued under the laws of a country or territory outside the Isle of Man service of legal process may be effected upon the company and any director of the company holding office immediately prior to its discontinuance in the Isle of Man in any proceeding arising out of actions or omissions occurring prior to the discontinuance by serving the same upon the registered agent of the company who delivered the application pursuant to section 165(1) at its registered office for the time being.

Restrictions on dis-continuance of Isle of Man company.

169. A company shall not be eligible for continuation as a body corporate under the laws of any other country or territory unless at the time of the application under section 165(1), the laws of that country or territory provide, in effect, that when a company is continued as a body corporate in that country or territory:

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

against such body corporate.

Consequences of discontinuance of company.

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

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

PART XII

MEMBERS' REMEDIES

Interpretation of this Part.

171. In this Part “member”, in relation to a company, means:

- (a) a shareholder or a personal representative of a shareholder;
- (b) a guarantee member of a company limited by guarantee or limited by shares and guarantee; and
- (c) a member of an unlimited company without shares.

Restraining compliance order.

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

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

this Act or the memorandum or articles.

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

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

Derivative actions.

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

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

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

- (a) whether the member is acting in good faith;
- (b) whether the derivative action is in the interests of the company taking into account the view of the company's directors on commercial matters;

- (c) whether the proceedings are likely to succeed;
 - (d) the costs of the proceedings in relation to the relief likely to be obtained; and
 - (e) whether an alternative remedy to the derivative claim is available.
- (3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that:
- (a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
 - (b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.
- (4) Unless the Court otherwise orders, not less than 28 days' notice of an application for leave under subsection (1) shall be served on the company and the company is entitled to appear and be heard at the hearing of the application.
- (5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).
- (6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

Costs of derivative action.

174. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 173, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings shall be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

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

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

Powers of Court where leave granted under section 173.

175. (1) The Court may, at any time after granting a member leave under section 173, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including:

- (a) an order authorising the member or any other person to control the proceedings;
- (b) an order giving directions for the conduct of the proceedings;
- (c) an order that the company or its directors provide

information or assistance in relation to the proceedings; and

- (d) an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid in whole or in part to former and present members of the company instead of to the company.

Compromise, settlement or withdrawal of derivative actions.

176. No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 173 may be settled or compromised or discontinued without the approval of the Court.

Personal actions by members.

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

Prejudiced members.

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

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

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

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

Representative actions.

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

- (a) as to the control and conduct of the proceedings;
- (b) as to the costs of the proceedings; and

- (c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.

PART XIII

FOREIGN COMPANIES

Meaning of "establishing a place of business".

180. (1) For the purposes of this Part, a foreign company does not establish a place of business in the Isle of Man solely by reason of the fact that:

- (a) it is or becomes a party to legal proceedings or settles a legal proceeding or a claim or dispute in the Isle of Man;
- (b) it maintains a bank account in the Isle of Man;
- (c) it creates evidence of a debt, or creates a charge on property in the Isle of Man;
- (d) it secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts in the Isle of Man;
- (e) it invests any of its funds or holds any property (including any real property or any other property registered in any register in the Isle of Man or otherwise subject to Isle of Man law) in the Isle of Man;
- (f) it enters into any transaction with any person who is resident in the Isle of Man; or
- (g) services are provided to it, or in relation to it, which constitute regulated activities for the purposes of the Fiduciary Services Acts 2000 and 2005.

Registration of foreign company.

181. (1) A foreign company shall not establish a place of business in the Isle of Man unless:

- (a) it is registered under this Part; or
- (b) it has applied to be so registered and the application has not been determined.

(2) An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by:

- (a) evidence of its incorporation satisfactory to the Registrar; and
- (b) a notice specifying the name of the person appointed as the registered agent of the foreign company in the Isle of Man, endorsed by the registered agent with such person's agreement to act as registered agent.

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

Registration.

182. Upon receipt of the documents specified in section 181(2), the

Registrar shall register the foreign company in the register of foreign companies.

Registration of changes in particulars and annual returns.

183. (1) A foreign company registered under this Part shall file a notice in the approved form within one month after a change in:

- (a) its corporate name;
- (b) the jurisdiction of its incorporation; or
- (c) its registered agent

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

(3) A foreign company registered under this Part shall file an annual return in the approved form within one month after each anniversary of the date of such company's registration under this Part.

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

Foreign company to have registered agent.

184. (1) A foreign company that establishes a place of business in the Isle of Man shall, at all times, have a registered agent in the Isle of Man.

(2) No person shall act, or agree to act, as the registered agent of a foreign company unless that person:

- (a) holds a licence granted under the Fiduciary Services Acts 2000 and 2005 which does not exclude acting as registered agent; or
- (b) is not required, whether by exemption or otherwise, to hold a licence under the Fiduciary Services Acts 2000 and 2005 in order to act as registered agent under the terms of such Acts.

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

(4) A person who contravenes subsection (2) commits an offence.

Control over names of foreign companies.

185. (1) Where the Registrar is satisfied that the corporate name of, or a name being used by, a foreign company that has established a place of business in the Isle of Man is undesirable, the Registrar may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in the Isle of Man under, or using, that name.

(2) For the purposes of subsection (1), a name is undesirable if:

- (a) its use would contravene another enactment or any regulations;
- (b) subject to section 17:
 - (i) it is identical to the name under which a company is or has been incorporated, continued or re-registered under this Act or registered under the Companies Act

1931; or

- (ii) it is so similar to the name under which a company is or has been incorporated, continued or re-registered under this Act or registered under the Companies Act 1931, that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead.
 - (c) it is identical to a name that has been reserved under section 18 or that is so similar to a name that has been reserved under section 18 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;
 - (d) it contains a restricted word or phrase, unless the Registrar has given prior written consent to the use of the word or phrase; or
 - (e) in the opinion of the Registrar it is offensive or, for any other reason objectionable.
- (3) A foreign company on which a notice is served under subsection (1) shall not carry on business in the Isle of Man under, or using, the name specified in the notice from:
- (a) a date 28 days after the date of the service of the notice; or
 - (b) such later date as may be specified in the notice.
- (4) The Registrar may, at any time, withdraw a notice served under subsection (1).
- (5) A foreign company on which a notice is served under subsection (1) shall, if it proposed to carry on business in the Isle of Man under, or using, an alternate name, file a notice of the alternate name.
- (6) A foreign company that contravenes subsection (3) commits an offence.

Foreign company ceasing to have a place of business in the Isle of Man.

186. (1) A foreign company shall, within 28 days of ceasing to have a place of business in the Isle of Man, file a notice in the approved form.

(2) On receipt of a notice under subsection (1), the Registrar shall remove the name of the foreign company from the register of foreign companies and, from that time, the person appointed as the registered agent of the foreign company ceases to be its registered agent.

Service of documents on a foreign company registered under this Part.

187. (1) A document may be served on a foreign company registered under this Part by leaving it at, or sending it by post to, the address of the registered agent of the foreign company.

(2) Subsection (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

Validity of transactions not affected.

188. A failure by a foreign company to comply with this Part does not affect the validity or enforceability of any transaction entered into by the foreign company.

Transitional provisions for this Part.

189. (1) In this section, “effective date” means the date when this Part is brought into force.

(2) A foreign company that, immediately before the effective date, had established a place of business in the Isle of Man shall, if it continues to have a place of business in the Isle of Man after the effective date, apply for registration under this Part within 12 weeks of the effective date.

(3) Subsection (2) does not apply to a foreign company registered under Part XI of the Companies Act 1931 at the effective date.

(4) A foreign company to which subsection (2) applies may apply for registration under this part.

(5) A foreign company to which subsection (2) applies does not commit an offence under section 181(3) by having a place of business in the Isle of Man during the period commencing with the effective date and terminating on the earlier of:

(a) a date on which it files its application; and

(b) the expiry of the period of 12 weeks after the effective date.

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

PART XIV

LIQUIDATION AND RECEIVERSHIP, STRIKING-OFF AND DISSOLUTION

Chapter 1 – Liquidation and Receivership

Application of the Companies Act 1931.

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

Chapter 2 – Striking Off

Striking company off register.

191. (1) The Registrar may strike the name of a company off the register of companies if:

(a) the company:

(i) fails to appoint a registered agent under section 75(1) or 76(4); or

(ii) fails to file any return, notice or document required to be filed under this Act; or

(b) the Registrar is satisfied that the company has ceased to carry on business; or

(c) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) If the Registrar is of the opinion that the company is trading or has property or that there is some other reason why the company should not be struck off the register of companies, the Registrar may, instead of striking the company from the register of companies, refer the

company to the Commission for investigation.

(3) Before striking a company off the register of companies on the grounds specified in subsection (1)(a) or (1)(b), the Registrar shall:

- (a) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the register of companies on a date specified in the notice which shall be no less than 12 weeks after the date of the notice; and
- (b) publish a notice of the Registrar's intention to strike the company off the register in such manner as may be prescribed by regulations.

(4) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the register of companies.

(5) The Registrar shall publish a notice of the striking of a company from the register of companies in such manner as may be prescribed by regulations.

(6) The striking of a company off the register of companies is effective from the date of the notice published under section 191(5).

(7) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice under section 191(5).

Appeal.

192. (1) Any person who is aggrieved by the striking of a company off the register under section 191 may, within 12 weeks of the date of the notice published in such manner as may be prescribed by regulations, appeal to the Court.

(2) Notice of an appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking of a company off the register of companies, suspend the operation of the striking off upon such terms as the Registrar considers appropriate, pending the determination of the appeal.

Effect of striking off.

193. (1) Where a company has been struck off the register of companies under section 191, the company and the directors, members and any liquidator or receiver thereof, may not:

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
- (c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where a company has been struck off the register of companies under section 191, the company, or a director, member, liquidator or receiver thereof, may:

- (a) make application for restoration of the company to the

register of companies;

- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) Under section 191 the fact that a company is struck off the register of companies does not prevent:

- (a) the company from incurring liabilities; or
- (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution;

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

Dissolution of company struck off the register.

194. If a company has been struck off the register of companies under section 191 and remains struck off continuously for a period of 12 years, the company shall be deemed to have been dissolved.

Restoration of name of company to register by Registrar.

195. (1) Where a company has been struck off the register of companies under section 191, but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of all outstanding fees, restore the company to the register of companies and issue a certificate of restoration to the register of companies.

(2) Where the company has been struck off the register under section 191, the Registrar shall not restore the company to the register of companies unless:

- (a) the Registrar is satisfied that a person meeting the requirements of section 73(3) has agreed to act as registered agent of the company; and
- (b) the Registrar is satisfied that it would be fair and reasonable for the name of the company to be restored to the register of companies.

(3) An application to restore a company to the register of companies under subsection (1) may be made by the company, or a creditor, member or liquidator of the company and shall be made within 12 years of the date of the notice published under section 191.

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

(5) Notice of an appeal under subsection (3) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

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

Restoration of

196. (1) Where a company has been dissolved pursuant to this

name to register by Court.

Chapter, application may be made to the Court to restore the company to the register of companies by the company, or any creditor, member or liquidator of the company, and shall be made within 20 years of the date of the notice published under section 191(5).

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

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

Appointment of liquidator of company struck off.

197. (1) Where a company has been struck off the register of companies under section 191, the Registrar may apply to the Court for an order that the company be wound up.

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

(a) the company is restored to the register of companies; and

(b) the liquidator is deemed to have been appointed by the Court under the Companies Act 1931.

Chapter 3 – Alternative Procedure for Dissolving Solvent Companies

Alternative procedure for dissolving solvent companies.

198. (1) Where a company has ceased to operate and has discharged all its debts and liabilities (other than those owed to its members in their capacities as such) a company, its registered agent or any director may apply to the Registrar for a declaration of dissolution of the company.

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

(3) Upon receipt of an application under subsection (1) the Registrar shall publish a notice in such manner as may be prescribed by regulations to the effect that the applicant has applied to the Registrar for a declaration of dissolution of the company and that, unless written objection is made to the Registrar within 28 days of the date of publication of the notice, the Registrar may dissolve the company.

(4) Before making an application to the Registrar under this section, the applicant shall ensure that there has been sent by pre-paid post to each director, to the registered agent and to each member of the company at the last business or residential address of which the company has notice, a notice to the effect that the applicant proposes to apply to the Registrar for a declaration of dissolution of the company and that, unless written objection is made to the Registrar within 28 days of the date the notice was posted, the Registrar shall dissolve the company.

(5) The Registrar shall not make a declaration of dissolution of a company earlier than 28 days after the date of the publication of the notice required by subsection (3).

(6) On receipt of any written objection to the dissolution of the company, the Registrar shall notify the applicant for the declaration of

dissolution of the receipt of the objection and of the identity of the objector.

(7) Where a person has objected to the dissolution of the company, the Registrar shall not declare the dissolution of the company unless:

- (a) the objection is withdrawn; or
- (b) the Registrar decides that the objection is without justification and:
 - (i) the objector has not appealed against the Registrar's decision to the Court within 21 days after the date of the decision; or
 - (ii) the Court has upheld the Registrar's decision.

(8) If the Registrar is not prevented from declaring the dissolution of a company pursuant to this section, the Registrar shall notify the company that, subject to the company's memorandum and articles, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the company may distribute its surplus assets accordingly.

(9) Subject to subsection (10), on receipt of notification from a company:

- (a) that its surplus assets have been distributed in accordance with subsection (8); or
- (b) that the company, having carried out full inquiry, is unable to distribute its surplus assets,

the Registrar shall publish a notice in such manner as may be prescribed by regulations which declares that the company is dissolved and, on the publication of the notice, the company shall be dissolved and any surplus assets which have not been distributed shall be deemed to be *bona vacantia* in accordance with section 201.

(10) Notwithstanding the dissolution of the company:

- (a) the liability, if any, of every director and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) notwithstanding that a company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the Court may wind up the company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

Restoration of
dissolved
companies by the
Court.

199. (1) Where a company has been dissolved pursuant to section 198, section 154(5) or section 157(4), the Court, on an application made by the Commission, the Registrar or any director, member or creditor of the company before the expiration of 12 years from the publication of the notice of dissolution, may, if satisfied that at the time of dissolution of the company it was in operation or had not discharged all its debts and liabilities or otherwise that it is fair and reasonable that the dissolution of

the company be revoked, order that the dissolution of the company be revoked, and upon a certified copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if it had not been dissolved, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(2) An order under subsection (1) may be made on such terms and conditions as the Court thinks fit.

Alternative procedure for restoration of dissolved companies.

200. (1) A company or, any director, member or creditor thereof who feels aggrieved by the company having been dissolved under section 194 or 198 may, before the expiration of 12 years from the date of dissolution pursuant to section 194 or the publication of a notice under section 198(9) (as the case may be), make application to the Registrar for a direction under this section.

(2) An application under subsection (1) shall be in the approved form and shall be accompanied by a copy of the notice given under subsection (3).

(3) Before making an application to the Registrar under subsection (1), the applicant shall ensure that there has been sent by pre-paid post to each director, to the registered agent and to each member of the company as at the date of dissolution at the last business or residential address of which the company has notice, a notice to the effect that the applicant proposes to apply to the Registrar for a direction restoring the company to the register of companies and that unless written objection is made to the Registrar within 28 days of the date of publishing or posting, as the case may be, the Registrar shall make such direction.

(4) Upon receipt of an application under subsection (1) the Registrar shall, within a reasonable time, publish notice of the application in such manner as may be prescribed by regulations and shall maintain a current list of applications.

(5) The Registrar shall not make a direction under this section earlier than 28 days after the date of posting of the last notice posted for the purposes of subsection (3).

(6) On receipt of any written objection to the restoration of the company, the Registrar shall forthwith notify the applicant of the receipt of the objection and of the identity of the objector.

(7) The Registrar shall not make a direction under this section unless:

(a) there are no objections to the restoration of the company under this section; or

(b) all objections are withdrawn; or

(c) the Registrar decides that the objections are without justification and:

(i) the objector has not appealed against the Registrar's decision within 21 days after the date of the decision; or

(ii) the Court has upheld the Registrar's decision,

(8) Subject to subsection (7), on receipt of an application under this section the Registrar shall direct the name of the company to be restored to the register of companies.

(9) Upon the Registrar making a direction for registration pursuant to subsection (8), the company shall be deemed to have continued in existence as if it had not been dissolved.

(10) This section is without prejudice to the powers of the court under sections 195 and 199.

Chapter 4 – Property of Dissolved Companies

Property of dissolved company to be *bona vacantia*.

201. (1) Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (but not including property held by the company on trust for any other person) shall be deemed to be *bona vacantia* and shall accordingly vest in the Treasury in trust for the Crown and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown.

(2) Except as provided by section 203 below, this section shall have effect subject and without prejudice to any order made by the Court under section 199.

Power to disclaim title to property vesting under section 201.

202. (1) Where any property vests in the Treasury under section 201, the Treasury's title thereto under that section may be disclaimed by a notice by the Treasury.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Treasury under section 201, and subsections (2) and (6) of section 252 of the Companies Act 1931 shall apply in relation to the property as if it had been disclaimed under subsection (1) of the said section 252 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by the Treasury either expressly or by taking possession or other act evincing that intention.

Disposal of property vesting under section 201.

203. (1) Where a company is dissolved and any property or right vested in or held on trust for that company immediately before its dissolution vests as *bona vacantia* accruing to the Treasury by virtue of section 201 above, the Treasury may dispose of, or of an interest in, that property or right notwithstanding that an order may be made under section 272(1) of the Companies Act 1931 or section 199 in relation to that company; and where any such order is made:

- (a) it shall not affect that disposition (but without prejudice to that order so far as it relates to any other property or right previously vested in or held on trust for the company); and
- (b) the Treasury shall pay to the company an amount equal to the amount of any consideration received for the property or right, or interest therein, or to the value of any such consideration at the time of the disposition, or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

PART XV

INVESTIGATION OF COMPANIES

Definition of
"inspector".

204. In sections 204 to 210, "inspector" means an inspector appointed by an order made under section 205(2).

Investigation
order.

205. (1) A member or the Registrar or the Commission may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of a company and any of its associated companies.

(2) If, upon an application under subsection (1), it appears to the Court that:

- (a) the business of a company or any of its associated companies is or has been carried on with intent to defraud any person;
- (b) a company or any of its associated companies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the incorporation, business or affairs of a company or any of its associated companies have in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of that company and any of its associated companies by an inspector, who may be the Commission.

(3) If a member makes an application under subsection (1), such member shall give the Registrar and the Commission reasonable notice of it, and both the Registrar and the Commission are entitled to appear and be heard at the hearing of the application.

Court's powers.

206. (1) An order made under section 205(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) An order made under section 205(2) may:

- (a) replace the inspector;
- (b) determine the notice to be given to any interested person, or dispensing with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the

inspector and to give evidence upon oath or affirmation;

- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published, and, if so, ordering the Commission to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) require an inspector to discontinue an investigation.

(2) The inspector shall deliver a copy of every report made by such inspector under this section to the Commission.

(3) A report received by the Commission under subsection (2) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (1)(i).

Inspector's powers.

207. An inspector:

- (a) has the powers set out in the order appointing such inspector; and
- (b) shall upon request produce to any interested person a copy of the order.

Hearing *in camera*.

208. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence.

209. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject that person to any proceeding or penalty, but the evidence may not be used or received against that person in any proceeding thereafter instituted against that person, other than a prosecution for perjury in giving the evidence.

Absolute privilege.

210. An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

PART XVI

DISQUALIFICATION OF UNFIT PERSONS

Disqualification of unfit persons.

211. (1) Where on an application by the Commission under this section it appears to the Court that a person's conduct makes such person unfit:

- (a) to be a director of a company; or
- (b) to be a liquidator of a company; or
- (c) to be a receiver or manager of a company's property; or

- (d) in any way, whether directly or indirectly, to be concerned or take part in the promotion, formation or management of a company,

the Court may make a disqualification order.

(2) A person who is the subject of a disqualification order shall not, without the leave of the Court, undertake any of the offices and activities referred to in subsection (1)(a) to (d).

(3) Without prejudice to the generality of subsection (1), the Court may treat a person as unfit to undertake any of the offices or activities referred to in paragraphs (a) to (d) of that subsection if the person or a body corporate of which that person is a director or similar officer:

- (a) has been convicted of an offence (whether in the Isle of Man or elsewhere) which involves dishonesty;
- (b) has been convicted (whether in the Isle of Man or elsewhere) within the 25 years ending with the date of the application of any combination of 3 or more offences under any legislation for the time being in force in the Isle of Man or in any country or territory outside the Isle of Man relating to the incorporation, management or operation of companies or other bodies whether incorporated or unincorporated;
- (c) has been convicted of any offence under any legislation for the time being in force in the Isle of Man or in any country or territory outside the Isle of Man relating to any of the following matters, namely:
 - (i) banking business;
 - (ii) insurance business;
 - (iii) investment business;
 - (iv) corporate, trust or fiduciary services;
 - (v) insider dealing; or
 - (vi) any financial services; or
- (d) has failed to comply with a direction of the Court under subsection (4).

(4) Without prejudice to any other powers of the Court, where a person is in default in relation to any provision of this Act the Court may, on an application to it by the Commission or by any person affected by the default, by order direct the person in default (whether or not that person is in the Isle of Man) to rectify the default forthwith.

(5) The Commission shall keep an index of those persons subject to disqualification orders in such form and containing such particulars as may be prescribed by regulations and shall make the index available for inspection:

- (a) at the office of the Registrar; and
- (b) on the Commission website or in such other manner as the

Commission may deem appropriate.

Disqualification:
supplementary
provisions.

212. (1) The period for which a disqualification order under section 211 shall operate shall begin with the date of the order and shall not be less than 3 years nor be more than 15 years.

(2) A disqualification order or a direction under section 211(4) may be made on grounds which are or include:

- (a) matters arising before or after the commencement of section 211; and
- (b) matters other than criminal convictions, even if the person in respect of whom it is to be made may be criminally liable in respect of those matters.

(3) In considering whether to make a disqualification order on the grounds that the person concerned was a director or similar officer of a body corporate which has been convicted of offences specified in section 211(3)(a) to (c) or which has failed to comply with a direction under section 211(4), the Court shall give due account to any evidence given by or on behalf of the person concerned that such person took all such steps as were reasonably open to that person to ensure that no offence would be committed or, as the case may be, that no such failure would occur.

(4) Rules of Court may be made with regard to the procedure for obtaining:

- (a) a disqualification order;
- (b) leave of the Court under section 211(2); and
- (c) a direction under section 211(4),

and may include such provision as to evidence or proof of any matter for the purposes of such procedure.

(5) Section 211 is in addition to and not in derogation of section 31 of the Companies Act 1982 and section 26 of the Companies Act 1992.

(6) A person who acts in contravention of a disqualification order commits an offence.

(7) In section 211:

“company” includes any body corporate (wherever incorporated) and includes any association;

“director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

PART XVII

ADMINISTRATION AND GENERAL

Optional
registration of
register of
members.

213. (1) A company may elect to file a copy of its register of members for registration by the Registrar.

(2) A company that has elected to file a copy of its register of members for registration shall, until it notifies the Registrar of its election

to cease registration under subsection (3), file for registration any changes in its register of members by filing for registration a copy of the register containing the changes within one month of such changes being made to the register.

(3) A company that has elected to file a copy of its register of members for registration by the Registrar may elect to cease registration by so filing a notice in the approved form.

Optional
registration of
register of
directors.

214. (1) A company may elect to file a copy of its register of directors for registration by the Registrar.

(2) A company that has elected to file a copy of its register of directors for registration shall, until it notifies the Registrar of its election to cease registration under subsection (3), file for registration any changes in its register of directors by filing for registration a copy of the register containing the changes within one month of such change being made to the register.

(3) A company that has elected to file a copy of its register of directors for registration by the Registrar may elect to cease registration by so filing a notice in the approved form.

Registrar of
Companies.

215. (1) The Commission:

(a) shall appoint a suitably experienced person to be Registrar of Companies; and

(b) may appoint one or more Deputy Registrars of Companies; on such terms and conditions as it considers appropriate.

(2) The Registrar and any Deputy Registrars are employees of the Commission.

(3) Subject to the control of the Commission the Registrar is responsible for the administration of this Act.

(4) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties and functions of the Registrar and the fact that a Deputy Registrar exercises those powers, duties and functions is conclusive evidence of such Deputy Registrar's authority to do so.

Registers.

216. (1) The Registrar shall maintain:

(a) a register of companies incorporated or continued under this Act;

(b) a register of foreign companies registered under Part XIII; and

(c) a register of charges registered under Part VIII.

(2) The registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, be means of a device or facility:

(a) that records or stores information magnetically, electronically or by other means; and

- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) Regulations may provide for the keeping of registers by the Registrar in electronic form, the filing of documents in both paper and electronic form, including the approval by the Registrar of systems and the inspection of registers kept in electronic form.

Filing of documents.

217. (1) Where a document is required to be filed by a company, it may be filed:

- (a) by the registered agent of the company;
- (b) by a director of the company; or
- (c) by an advocate or registered legal practitioner in the Isle of Man acting for the company.

(2) Regulations may provide for the electronic filing of any document under this Act or any regulations.

Power of Registrar to refuse to register documents.

218. (1) The Registrar may refuse to accept for registration any document filed under this Act or any regulations if:

- (a) it does not comply with this Act or any regulations;
- (b) it has not been duly completed;
- (c) it contains any material error;
- (d) it is not legible; or
- (e) it is not accompanied by any applicable fee, duty or penalty.

(2) If the Registrar refuses to accept a document under subsection (1), the Registrar shall return the document to the person who submitted it together with a notice in the approved form specifying the grounds upon which such document has been rejected.

(3) A document validly rejected by the Registrar under subsection (1) shall be deemed not have been filed for the purposes of this Act and any regulations.

(4) Any person who is aggrieved by the rejection of a document by the Registrar under subsection (1) may appeal to the Court within 28 days after the date of the rejection or such further time as the Court may allow.

(5) On hearing an appeal under subsection (4), the Court may confirm the rejection of make such determination in the matter as the Court sees fit.

Inspection and evidence of Registers.

219. (1) A person may:

- (a) inspect the documents kept by the Registrar pursuant to this Act; and
- (b) require a certificate of incorporation, merger, consolidation, continuation, discontinuance, dissolution, re-registration or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which the Registrar has custody, to be certified

by the Registrar; and a certificate of incorporation, merger, consolidation, continuation, discontinuance, dissolution, re-registration or good standing or a certified copy or extract is conclusive evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

Form of certificate.

220. Any certificate or other document required to be issued by the Registrar under this Act shall be in the approved form.

Certificate of good standing.

221. (1) The Registrar shall, upon request by any person, issue a certificate of good standing certifying that a company is of good standing if the Registrar is satisfied that:

- (a) the company is on the Register; and
- (b) the company has paid all fees, annual fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether:

- (a) there are documents on the company file relating to winding up or dissolution of the company or the appointment of a receiver in respect of any of its assets ; or
- (b) any proceedings to strike the name of the company off the Register have been instituted.

Fees and penalties.

222. (1) Regulations may prescribe the fees, duties and penalties which are to be paid under this Act and any regulations or in relation to any function undertaken by the Registrar or the Commission under this Act or any regulations.

(2) Fees, duties and penalties payable under this Act and any regulations shall form part of the General Revenue of the Isle of Man.

Company struck off liable for fees, etc.

223. A company continues to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register.

Fees payable to Registrar.

224. The Registrar may refuse to take any action required of the Registrar under this Act for which a fee, duty or penalty is prescribed by regulations until all fees, duties and penalties have been paid.

Companies Regulations.

225. (1) The Treasury may make regulations generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed or provided for by this Act.

(2) Regulations may make different provisions in relation to different persons, circumstances or cases.

Approval of forms by Registrar.

226. (1) The Registrar may, by publication in such manner as may be prescribed by regulations, approve forms to be used where specified in this Act.

(2) Where a form is required to be in “approved form”, it shall:

- (a) contain the information specified in; and
 - (b) have attached to it such documents as may be required by,
- the form approved by the Registrar under subsection (1).

PART XVIII

MISCELLANEOUS PROVISIONS

Declaration by
Court.

227. (1) A company may, without the necessity of joining any other party, apply to the Court, by petition supported by an affidavit, for a declaration on any question of interpretation of this Act or of the memorandum or articles of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty by such person, to have properly discharged such duties in the subject matter of the application.

Interpretation.

228. In this Act, unless the context otherwise requires:

“1931 Act company” means a company incorporated under the Companies Acts 1931 to 2004;

“approved form” means a form approved by the Registrar in accordance with section 226;

“articles” means the original, amended or restated articles of association of a company;

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

“associated company” means, in relation to any company:

- (a) any company of which that company is a director;
- (b) any company which is a director of that company;
- (c) any subsidiary of that company;
- (d) any holding company of that company; and
- (e) any subsidiary of any such holding company;

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

“board”, in relation to a company, means:

- (a) the board of directors, committee of management, council or other governing authority of the company acting together; or
- (b) if the company has only one director, that director;

“cell” means a cell created by a PCC for the purpose of segregating and protecting cellular assets in the manner provided by Part VII;

“cell share capital” has the meaning given in section 117;

“cell shares” has the meaning given in section 117;

“cellular assets” has the meaning given in section 115(5);

“cellular distribution” has the meaning given in section 118(1);

“corporate director” means a director or a person who is proposed to be a director (as the case may be) who is not an individual;

“class”, in relation to shares, means a class of shares each of which has identical rights, privileges, limitations and conditions attached to it;

“Commission” means the Financial Supervision Commission;

“company” has the meaning specified in section 229(1);

“company number” means the number allotted to the company by the Registrar:

- (a) on its incorporation under section 3(1);
- (b) on its continuation under section 160; or
- (c) on its re-registration under Chapter 2 of Part IX;

“continued” means continued under section 160;

“continued company” has the same meaning specified in section 160(6);

“Court” means the High Court of Justice of the Isle of Man;

“creditor” includes present, future and contingent creditors;

“director” has the meaning specified in section 231;

“disqualified person” means a person who for the time being is the subject to a disqualification order made by the Court pursuant to section 211;

“distribution” has the meaning specified in section 48;

“document” means a document in any form and includes:

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) books and drawings; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and, without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“file”, in relation to a document, means to deliver the document to the office of the Registrar at a time when such office is open to the public and includes, for the avoidance of doubt, delivery by electronic means in such manner, and at such time, as may be prescribed under section 218(2);

“foreign company” has the meaning specified in section 229(2);

“guarantee member” has the meaning specified in section 58;

“liability” includes any debt or obligation, whether actual, prospective or contingent;

“limited company” means a company of a type specified in section 1 paragraphs (a), (b) and (c);

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

- (a) a shareholder;
- (b) a guarantee member; or
- (c) a member of an unlimited company who is not a shareholder;

“memorandum” means the original, amended or restated memorandum of association of a company;

“non-cellular assets” has the meaning give in section 115(4);

“non-cellular distribution” has the meaning given in section 118(4);

“protected cell company” or “PCC” means a company that has been incorporated or continued as, or has been converted into, a protected cell company for the purposes of Part VII;

“register”, in relation to an act done by the Registrar, means to retain (where appropriate) and to register in the register of companies, the register of foreign companies or the register of charges, as appropriate;

“register of charges” means the register of charges maintained by the Registrar in accordance with section 216(1)(c);

“register of companies” means the register of companies maintained by the Registrar in accordance with section 216(1)(a);

“register of foreign companies” means the register of foreign companies maintained by the Registrar in accordance with section 216(1)(b);

“registered agent” means:

- (a) in relation to a company, the person who is the company’s registered agent in accordance with section 73(2), or
- (b) in relation to a foreign company, the person who is the company’s registered agent as required by section 184(1);

“registered office” has the meaning specified in section 72(2);

“Registrar” means the [Registrar of Companies] appointed under

section 209;

“regulations” means regulations made under section 225;

“relevant model articles” has the meaning specified in section 6(3);

“resolution”:

- (a) in relation to the members of a company, has the meaning specified in section 64; and
- (b) in relation to the directors of a company, has the meaning specified in section 107;

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

“restated memorandum” means a single document that incorporates the memorandum together with all amendments made thereto;

“securities” means shares and debt obligations of every kind, and includes options, warrants and rights to acquire shares or debt obligations;

“shareholder” has the meaning specified in section 58;

“solvency test” has the meaning specified in section 48;

“statutory declaration” means:

- (a) if made in the Isle of Man, a declaration made under the Evidence Act 1871; and
- (b) if made in a country or territory outside the Isle of Man, a declaration made before a justice of the peace, notary public or other person having authority therein under any law for the time being in force to take or receive a declaration;

“subscriber” means a person who signs the original memorandum and articles (if any) of a company under section 2(1);

“transaction” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed;

“unlimited company” means a company of a type specified in section 1(d) or (e); and

“voting rights” means, in relation to a resolution of the members of a company, or a class of members of a company, all the rights to vote on such resolution conferred on the members of the company.

Meaning of
“company” and
“foreign
company”.

229. (1) Unless this Act expressly provides otherwise, “company” means:

- (a) a company incorporated under section 3,
- (b) a company re-registered under Part IX;
- (c) a company continued under section 163; or
- (d) a 1931 Act company that has re-registered under Part IX,

but excludes a company that has been dissolved and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Isle of Man in accordance with section 168.

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

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

Meaning of “subsidiary” and “holding company”.

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

- (a) the second company:
 - (i) holds a majority of the voting rights in the first company;
 - (ii) is a member of the first company and has the right to appoint or remove a majority of its board; or
 - (iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights of the first company; or
- (b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

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

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

Meaning of “director”.

231. (1) Under this Act, “director” in relation to a company, a foreign company and any other body corporate means a person occupying or acting in the position of director by whatever name called.

(2) For the purposes of section 102 a person is deemed to be a director of a company if that person is:

- (a) a person in accordance with whose directions or instructions a director or the board of the company may be required or is accustomed to act; or
- (b) a person who exercises, or is entitled to exercise, or who controls, or is entitled to control, the exercise of powers which, apart from the memorandum or articles, would fall to be exercised by the board.

(3) Notwithstanding subsection (2), a person is not to be regarded as a director of a company for the purposes of section 102:

- (a) by reason only that a director or the board act on advice given by that person in a professional capacity; or
- (b) by virtue of that person acting:
 - (i) as a receiver of the company;

(ii) as the liquidator of the company.

Application of
Companies Acts
1931 to 2004.

232. Save as expressly provided in section 190, the provisions of the Companies Acts 1931 to 2004 shall not apply to a company incorporated or contained under this Act.

Offences.

233. (1) Any person guilty of an offence under any provision of this Act shall be liable:

(a) on summary conviction, to a fine not exceeding £5,000;

(b) on conviction on information, to an unlimited fine.

(2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager or other officer of the body corporate, or its registered agent, or a person who was purporting to act in any such capacity, such person, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

Repeals and
amendments.

234. (1) The enactments specified in Schedule 1 are amended in accordance with that Schedule.

(2) The enactments specified in Schedule 2 are repealed to the extent set out in column 3 of that Schedule.

Short title and
commencement.

235. (1) This Act may be cited as the Companies Act 2005.

(2) The provisions of this Act come into force on [●] 2005.

SCHEDULE 1

AMENDMENT OF ENACTMENTS

Companies Act 1931

1. After section 16 (registration of unlimited company as limited), add:

Re-registration
under Companies
Act 2005.

16A. (1) A company incorporated under this Act may, for the avoidance of doubt, re-register as a company incorporated under the Companies Act 2005, subject to compliance with the provisions of that Act.

(2) A company that re-registers as a company incorporated under the Companies Act 2005 shall deliver to the Financial Supervision Commission a certified copy of the certificate of re-registration issued pursuant to that Act within 14 days after the date thereof.

(3) A company that re-registers as a company incorporated under the Companies Act 2005 shall, with effect from the date of the certificate of re-registration referred to in subsection (2), cease to be a company registered under this Act and the Companies Acts 1931 to 2004 shall cease to apply to it from that date.

(4) Upon receipt of a certified copy of a certificate of registration pursuant to subsection (2), the Financial Supervision Commission shall issue a certificate of de-registration to the company stating that the company ceased to be registered under this Act on the date specified in subsection (3).

2. In section 312 (companies to which Part XI applies), insert at the beginning thereof the words “(1) Subject to subsection (2),” and at the end thereof insert:

“(2) this Part of this Act shall not apply to:

(a) a company incorporated outside the Isle of Man that establishes a place of business in the Isle of Man after the commencement of the Companies Act 2005; or

(b) a company incorporated outside the Isle of Man that is registered under Part XIII of the Companies Act 2005.

(3) For the avoidance of doubt, a company to which this Part of this Act applies may apply for registration under Part XIII of the Companies Act 2005.”

3. In section 319 (office where documents to be filed) insert after the words “Isle of Man” in subsection (2) the words “or is registered under Part XIII of the Companies Act 2005”.

Corporate Service Providers Act 2000

1. In paragraph 6(1) of Part I of Schedule 1 insert after the words “alternate director” the words “, registered agent”.
2. In paragraphs 6(1)(a) and (b) substitute the word “person” for the word “individual” wherever it appears.
3. In paragraph 6(3)(a) insert after the word “called” the words “, or registered agent”.

Section 234(2)

SCHEDULE 2

ENACTMENTS REPEALED

Volume/Chapter	Short title	Extent of Repeal
XX p. 387	Prevention of Fraud (Investments) Act 1968	The Whole Act
XIII p.235	Companies Act 1931	Part XII

Appendix 3

Possible additional provisions to include within the Companies Bill 2005

1. *Introduction*

In considering the proposed introduction of the NMV, Stikeman Elliott was instructed to propose commercial opportunities which may give the NMV a competitive edge.

The potential commercial innovations discussed below relate to (i) unanimous shareholder agreements, (ii) use of protected cell companies without restriction on the nature of the business conducted, and (iii) redomiciliation and conversion of companies into other business forms.

All three proposals have precedents in North American corporate statutes (Delaware and Canada) but generally have few or no equivalents in the international financial centres. The Steering Group would welcome comments regarding the possible inclusion of these measures in the Bill and in particular, potential client appetite for such products and any potential issues or abuse that might result in harm to the reputation of the Isle of Man

2. *Unanimous Shareholders Agreements*

2.1 *Background*

The Canadian Federal corporate statute and a number of Canada's provinces permit shareholders to enter into unanimous agreements to restrict director powers. To the extent that a unanimous shareholder agreement restricts the powers of the directors to manage, or supervise the management of, the business and affairs of the company, parties to the unanimous shareholder agreement who are given that power to manage or supervise have all the rights, powers, duties and liabilities of a director of the company. These agreements reflect the commercial reality in many companies that management is often exercised, effectively, at the shareholder level with the appointment of directors merely reflecting statutory requirements. The use of unanimous shareholder agreements in Canada is well established and has been widely used for over 20 years.

2.2 *Policy Considerations*

Alignment of the responsibility for management arrangements with the substance has obvious appeal, and there are a number of commercial advantages available in such arrangements. For example, unanimous shareholder agreements are useful to induce minority shareholders to invest. They are also advantageous for a majority or sole shareholder who wishes to bypass the board of directors and exercise direct control over the company.

However, where unanimous shareholder agreements are permitted it may be unclear to a third party who has authority to enter into certain transactions on behalf of the company (i.e., the directors or the shareholders). Accordingly, consideration should be given to public protection issues.

3. *Protected Cell Companies*

3.1 *Background*

The protected cell company concept provides for statutory segregation of assets and liabilities within separate and distinct partitions or cells of a company. This permits segregation of liabilities within each cell such that creditors of one cell are precluded from claiming assets of another cell.

A framework for the establishment and operation of protected cell companies is currently provided for in the Island's *Protected Cell Companies Act 2004*. The use of such companies is currently restricted to the carrying on of insurance business or such business as is prescribed by regulation, i.e., certain collective investment schemes. This framework is retained under the Companies Bill as currently drafted.

3.2 *Policy Considerations*

The use of protected cell companies has numerous advantages compared to traditional methods of creating legal divisions between asset groups, including reduced complexity and reduced administrative burden and cost.

The Steering Group is of the view that the extension of the protected cell company regime to permit it to be used without restriction as to business purpose under the Bill merits consideration. The *Delaware Limited Liability Company Act (Chapter 18)* permits an equivalent concept to protected cell companies (series share companies) with no restriction on company activities. Given that Delaware has adopted this concept, historic concerns in the international financial centres that this corporate innovation may not be recognised by the courts of the metropolitan centres merits reconsideration.

Cayman removed the restriction on the use of segregated portfolio companies in late 2001 and any exempted company may apply to be registered as a segregated portfolio company. Since removing this restriction, Cayman has reported the development of the use of such companies into various other sectors including multiple tranche debt issuing vehicles, securitisation and derivative transactions.

The revenue implications of protected cell company arrangements should also be considered; e.g., each cell might be required to pay the same fee as a company.

3.3 *Options for Implementation*

Liberalisation of the protected cell company regime could be achieved through the following options:

- (a) extension by regulation to additional general categories of corporate activity;
- (b) provision for *ad hoc* consents granted to individual companies to benefit from protected cell status with each case being evaluated on its own merit. A combination of options (a) and (b) might also be considered.; or
- (c) elimination of any restrictions on permissible spheres of business activity (as in Delaware).

4. *Redomiciliation and Conversion of Companies*

4.1 *Background*

North American corporate statutes have long permitted redomiciliation of companies (i.e., migration of governing law) and the Companies Bill provides for this in Part XI. The Delaware LLC statute has extended this concept as follows:

Title 18-216: Upon compliance with this section, a domestic limited liability company may convert to a corporation, statutory trust, business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

This provision appears to permit a domestic LLC effectively to convert into any one of a number of forms, both corporate *and* unincorporated (e.g., a trust or partnership). There also appears to be no restriction on movement to foreign jurisdictions in exercising this facility. There is, of course, no assurance that the reception jurisdiction will recognise the converted entity as such, and so this would be left for the individual user to assess on a case by case basis.

The Delaware LLC statute was amended in the summer of 2004 to further provide as follows:

When a limited liability company has been converted to another business form pursuant to this section, the other business form shall for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the limited liability company.

4.2 *Policy Considerations*

This facility may provide flexibility in reformatting investment holding structures by mitigating foreign capital gains tax exposures, which may otherwise apply on a liquidation and reinvestment. Once again, issues relating to tax consequences of arrangements in other jurisdictions would be left to individual users to assess.

These provisions are novel and are recent additions to the Delaware LLC statute. Accordingly, it may be difficult to identify potential abuse that might be facilitated by the inclusion of such provisions in the Bill. Any potential mischief might be controlled by limiting circumstances in which the facility could be used as set out in the options for implementation below.

4.3 *Options for Implementation*

Options for including a facility permitting redomiciliation and conversion of companies are as follows:

- (a) limiting circumstances in which the facility could be used to those prescribed by regulation;
- (b) at the outset, regulation may allow conversion only on judicial application (in an approach similar to a scheme of arrangement). As the Isle of Man gains experience in this area, additional circumstances (where the approval of the court is not required) could be prescribed by regulation; or
- (c) permitting unrestricted use of the facility (as in Delaware).

