

**No. 26 of 2005**

**VIRGIN ISLANDS**

**BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2005**

**ARRANGEMENT OF SECTIONS**

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**No. 26 of 2005**

**BVI Business Companies  
(Amendment) Act, 2005**

**Virgin  
Islands**

**I Assent**

**THOMAS MACAN  
Governor**

**21<sup>st</sup> December, 2005**

**VIRGIN ISLANDS**

**No. 26 of 2005**

An Act to amend the BVI Business Companies Act, 2004 (No. 16 of 2004).

[Gazetted 22<sup>nd</sup> December, 2005]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

**1.** (1) This Act may be cited as the BVI Business Companies (Amendment) Act, 2005.

(2) The provisions of this Act come into operation on 1st January 2006.

Amendment of  
reference.  
No. 16 of 2004

**2.** Wherever in the BVI Business Companies Act, 2004 (referred to in this Act as “the principal Act”) reference is made to “Governor in Council”, there shall be substituted “Executive Council”.

Section 6  
amended.

**3.** Section 6(1)(b) of the principal Act is amended by inserting before the words “articles that are signed”, the words “except in the case of an unlimited company that is not authorised to issue shares,”.

Section 9  
amended.  
No. 16 of 2004

**4.** Section 9 of the principal Act is amended

(a) in subsection (1)(e)(i), by deleting the words “to issue,” and substituting the words “to issue or that the company is authorised

to issue an unlimited number of shares, and”;

- (b) by repealing subsection (3); and
- (c) by repealing subsection (4) and substituting the following subsection:

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

**5.** Section 10(3) of the principal Act is amended by inserting before the word “capacity”, the word “purposes,”. Section 10 amended.

**6.** Section 12(4) of the principal Act is amended by inserting after the words “authorise the directors”, the words “, by resolution,”. Section 12 amended.

**7.** Section 17 of the principal Act is amended by repealing subsection (4) and substituting the following subsections: Section 17 amended.

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

(4A) The name of a segregated portfolio company that is a restricted purposes company shall include the designation “(SPV)” immediately before or immediately after the designation specified in subsection (4).”.

**8.** Section 18(1)(b) of the principal Act is amended Section 18 amended.

- (a) by redesignating the second subparagraph as subparagraph (ii); and
- (b) in the newly designated subparagraph (ii), by deleting the comma after the words “a former Act”.

**9.** Section 20(1) of the principal Act is amended by deleting the words “Where the name of a company is in the form permitted under section 19, the company” and substituting the words “A company”. Section 20 amended.

**10.** Section 23 of the principal Act is amended Section 23 amended.

- (a) in subsection (1)(b), by deleting the words “against a company” and substituting the words “against the company”;

- (b) in subsection (2), by deleting the words “section 21 or 22, the amendment of the company’s memorandum to state the new name has effect on” and substituting the words “under section 21 or 22, the company’s memorandum and articles are deemed to be amended to state the new name with effect from”.

Section 24  
amended.

**11.** Section 24 of the principal Act is amended

- (a) by deleting the words “or a former Act but which have” and substituting the words “, or by former Act companies, that have”;
- (b) in paragraph (b), by inserting after the word “Register”, the words “, or off a register maintained under a former Act, but not dissolved”; and
- (c) in paragraph (c), by inserting after the word “dissolved”, the words “under this Act or a former Act”.

Section 28  
amended.

**12.** Section 28 of the principal Act is amended

- (a) in subsection (2)(a), by deleting the words “without shares” and substituting the words “that in either case is not authorised to issue shares”;
- (b) in subsection (2)(b), by deleting the word “debentures”, and substituting the words “debt obligations of every kind and grant options, warrants and rights to acquire debt obligations”;
- (c) by repealing subsection (3) and substituting the following:

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

Section 29  
amended.

**13.** Section 29 of the principal Act is amended

- (a) by redesignating the current provision as subsection (1); and
- (b) by inserting after the current provision, the following subsection:

“(2) Subsection (1) does not apply with respect to a restricted purposes company.”.

**14.** Section 32 of the principal Act is amended

Section 32 amended.

- (a) in subsection (1)(b), by inserting after the words “of the company”, the words “or at the office of its registered agent”;
- (b) in subsection (2),
  - (i) by deleting the words “in relation to a document filed under Part VIII.”, and
  - (ii) by inserting the following paragraphs:
    - “(a) in relation to a document filed under Part VIII; or
    - (b) to a document relating to a restricted purposes company.”.

**15.** Section 35 of the principal Act is amended by inserting at the end of the section, the words “, with each share in the series having the rights, privileges, restrictions and conditions for that series as specified in the memorandum of the company, provided that each share in the series shall have the same rights, privileges, restrictions and conditions as all other shares in the same class”.

Section 35 amended.

**16.** Section 36(1) of the principal Act is amended

Section 36 amended.

- (a) in paragraph (b), by deleting “of capital or income”;
- (b) in paragraph (d), by deleting the full stop and substituting a semi colon; and
- (c) by inserting after paragraph (d) the following paragraph:
  - “(e) participate only in certain assets of the company.”.

**17.** Section 39 of the principal Act is amended

Section 39 amended.

- (a) by repealing subsection (1) and substituting the following:
  - “(1) Subject to its memorandum and articles, a company may issue fractional shares.”;
- (b) in subsection (2), by deleting the words “A fractional share” and substituting the words “Subject to its memorandum and articles, a

fractional share in a company”.

Section 40A  
inserted.

**18.** The principal Act is amended by inserting after section 40, the following section:

“Division and  
combination  
of shares.

40A. (1) Subject to its memorandum and articles, a company may

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

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

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

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

Section 41  
amended.

**19.** Section 41 of the principal Act is amended

- (a) in subsection (2), by deleting the word “any” immediately before the words “such form”; and
- (b) by repealing subsection (3).

Section 43  
amended.

**20.** Section 43(1) of the principal Act is amended by deleting the words “grant or”.

Section 44  
amended.

**21.** Section 44(2)(a) of the principal Act is amended by inserting after the words “of the company”, the words “or by such other person who may be authorised by the memorandum or articles to sign share certificates”.

Section 46  
amended.

**22.** Section 46(3) of the principal Act is amended by deleting the word “others” and substituting the words “other persons”.

- 23.** Section 47(1) of the principal Act is amended Section 47 amended.
- (a) by inserting after the words “promissory note,”, the words “or other written obligation to contribute money or property,”; and
  - (b) by inserting after the words “(including goodwill and know-how)”, the words “, services rendered”.
- 24.** Section 54 of the principal Act is amended Section 54 amended.
- (a) in subsection (7), by deleting the words “holder of those shares” and substituting the word “transferor”; and
  - (b) in subsection (8), by deleting the word “on” and substituting the word “in”.
- 25.** Section 56 of the principal Act is amended by repealing paragraph (b) and substituting the following paragraph: Section 56 amended.
- “(b) “distribution”, in relation to a distribution by a company to a member, means
- (i) the direct or indirect transfer of an asset, 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 a member,
- in relation to shares held by a shareholder, or to the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise, and includes a dividend.”.
- 26.** Section 57(1) of the principal Act is amended by deleting the words “at a time, and of an amount, and to any members” and substituting the words “to members at such time and of such an amount, as”. Section 57 amended.
- 27.** Section 59 of the principal Act is amended Section 59 amended.
- (a) in the marginal note, by inserting after the words “Company may”, the words “purchase, redeem or otherwise”;
  - (b) in subsection (2), by deleting the words “as may be”; and
  - (c) in subsection (4), by inserting after the words “immediately on”, the words “purchase, redemption or other”.

Section 60  
amended.

**28.** Section 60 of the principal Act is amended

- (a) in the marginal note, by inserting after the words “Process for”, the words “purchase, redemption or other”;
- (b) in subsection (1),
  - (i) by inserting after the words “make an offer to”, the words “purchase, redeem or otherwise”,
  - (ii) in paragraph (a), by inserting after the words “an offer to all shareholders to”, the words “purchase, redeem or otherwise”, and
  - (iii) in paragraph (b), by inserting after the words “an offer to one or more shareholders to”, the words “purchase, redeem or otherwise”; and
- (c) in subsection (2),
  - (i) in paragraph (a), by inserting after the words “permit the company to”, the words “purchase, redeem or otherwise”, and
  - (ii) in paragraph (b), by inserting after the words “the company is entitled to”, the words “purchase, redeem or otherwise”.

Section 61  
amended.

**29.** Section 61 of the principal Act is amended

- (a) in subsection (1)(a), by inserting immediately before the words “acquisition is to the benefit of”, the words “purchase, redemption or other”; and
- (b) in subsection (4),
  - (i) by inserting after the words “restraining the proposed”, the words “purchase, redemption or other”, and
  - (ii) in paragraph (a), by inserting immediately before the words “acquisition is not in”, the words “purchase, redemption or other”.

Section 63  
amended.

**30.** Section 63 of the principal Act is amended

- (a) in the marginal note, by deleting the word “Acquisitions” and

substituting the words “Purchases, redemptions or other acquisitions”; and

- (b) in paragraph (b), by deleting the words “purchases, redeems or otherwise acquires” and substituting the word “redeems”.

**31.** Section 64(1) of the principal Act is amended

Section 64  
amended.

- (a) by inserting after the words “shares that have been”, the words “purchased, redeemed or otherwise”;
- (b) in paragraph (a), by deleting the words “permit it to hold” and substituting the words “do not prohibit it from holding”;
- (c) in paragraph (b), by inserting after the words “shares to be”, the words “purchased, redeemed or otherwise”; and
- (d) in paragraph (c), by inserting after the words “the number of shares”, the words “purchased, redeemed or otherwise”.

**32.** Section 65 of the principal Act is amended

Section 65  
amended.

- (a) in the marginal note, by deleting the word “Reissue” and substituting the word “Transfer”;
- (b) by deleting the words “reissued” and “reissue” and substituting the words “transferred” and “transfer” respectively;
- (c) by deleting the words “as if they are new shares”; and
- (d) by inserting after the words “provisions of this Act”, the words “and the memorandum and articles”.

**33.** Section 66 of the principal Act is amended

Section 66  
amended.

- (a) in subsection (5)(b)(ii), by deleting the words “dividends and other payments” and substituting the word “distributions”;
- (b) in subsection (7), by deleting the words “The remedies” and substituting the words “Where the governing law of a mortgage or charge of shares in a company is the law of the Virgin Islands, the remedies”; and
- (c) in subsection (8), by deleting “In the case of the” and substituting “In the case of a”.

Section 68 amended.

**34.** Section 68(2) of the principal Act is amended by deleting the word “dividend” and substituting the word “distribution”.

Section 69 amended.

**35.** Section 69(1) of the principal Act is amended by deleting the words “disposes of” and substituting the word “transfers”.

Section 76 amended.

**36.** Section 76 of the principal Act is amended by inserting at the end of subsection (2) the words “and the right to consent to written resolutions of members”.

Section 78 amended.

**37.** Section 78 of the principal Act is amended in the marginal note by deleting the words “and “guarantee member”” and substituting the words “, “guarantee member” and “unlimited member””.

Section 79 amended.

**38.** Section 79 of the principal Act is amended

(a) in subsection (1), by deleting the words “A company” and substituting the words “Subject to subsection (1A), a company”;

(b) by inserting after subsection (1) the following subsection:

“ (1A) Subsection (1) does not apply during the period from the incorporation of the company to the appointment of its first directors under section 113(1).”.

(c) in subsection (2), by inserting after “guarantee member” the words “and where the company is authorised to issue shares, a guarantee member may also be a shareholder”; and

(d) in subsection (3), by inserting after “unlimited member” the words “and where the company is authorised to issue shares, an unlimited member may also be a shareholder”.

Section 80 amended.

**39.** Section 80(3) of the principal Act is amended

(a) in paragraph (b), by deleting the full stop at the end of the paragraph and substituting the word “; and”; and

(b) by inserting after paragraph (b), the following paragraph:

“(c) any liability to repay a distribution under section 58(1).”.

Section 81 amended.

**40.** Section 81 of the principal Act is amended

(a) in subsection (2), by deleting the words “a simple majority” and substituting the words “a majority of in excess of 50%”; and

- (b) in subsection (3)(b), by deleting the words “a member of an unlimited company without shares” and substituting the words “an unlimited member”.
- 41.** Section 82(6) of the principal Act is amended by deleting the words “The following” and substituting the words “Subject to the memorandum and articles, the following”. Section 82 amended.
- 42.** Section 83(2) of the principal Act is amended Section 83 amended.
- (a) by inserting after the words “specified in the memorandum or articles, of” the words “the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part.”; and
  - (b) by repealing paragraphs (a) and (b) and deleting the words from “have waived notice” to the end of the subsection.
- 43.** Section 84 of the principal Act is amended by deleting the words from “voting rights of the shares” to the end of the subsection and substituting the word “votes.”. Section 84 amended.
- 44.** Section 85 of the principal Act is amended Section 85 amended.
- (a) in subsection (1), by repealing paragraph (a);
  - (b) in subsection (1) (b), by deleting the words “subject to paragraph (a),”;
  - (c) in subsection (1) (j),
    - (i) by deleting the words “within 2 years”,
    - (ii) by deleting the words “an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended” and substituting the words “such additional period as is stated in the written agreement”; and
  - (d) by repealing subsection (4).
- 45.** Section 89 of the principal Act is amended Section 89 amended.
- (a) in subsection (1)(b), by deleting the words from “, in the absence of a provision” to the end of the subsection and substituting the words “by personal service on, or by mail addressed to, each

custodian of bearer shares in the company at the address shown in the register of members.”; and

(b) by repealing subsections (2) and (3).

Section 92  
amended.

**46.** Section 92 of the principal Act is amended

(a) by deleting subsection (2) and substituting the following subsection

“(2) A company that wishes to change its registered office or registered agent shall file a notice in the approved form.”; and

(b) in subsection (6), by deleting “subsection (1)” and substituting “subsection (2)”.

Section 100  
amended.

**47.** Section 100(3) of the principal Act is amended by deleting the words “The directors” and substituting the words “Subject to the memorandum and articles, the directors”.

Section 102  
amended.

**48.** Section 102 of the principal Act is amended

(a) in subsection (1)

(i) in paragraph (a), by inserting the word “and” after the semi colon at the end of subparagraph (iv), and

(ii) in paragraph (b), by deleting the semi colon at the end of subparagraph (iv) and substituting a full stop; and

(b) in subsection (2), by deleting the words “may have a common seal and, if it has a seal,” and substituting the words “shall have a common seal and”.

Section 103  
amended inserted.

**49.** Section 103 of the principal Act is amended by inserting after subsection (3), the following subsections:

“(4) Notwithstanding subsection (1)(a), an instrument is validly executed by a company as a deed or an instrument under seal if it is either

(a) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the memorandum and articles to witness the application of the company’s seal; or

- (b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company.

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

**50.** Section 106 of the principal Act is amended by inserting after subsection (2) the following subsection:

Section 106 amended.

“(3) An instrument appointing an attorney under subsection (1) may either be

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

**51.** Section 107 of the principal Act is amended by repealing subsection (2).

Section 107 amended.

**52.** Section 109 of the principal Act is amended

Section 109 amended.

- (a) by repealing subsection (4) and substituting the following subsection:

“(4) Subject to subsection (4A), a company shall, at all times, have one or more directors.”;

- (b) by inserting after subsection (4), the following subsection:

“(4A) Subsection (4) does not apply during the period between the incorporation of the company and the appointment of the first directors by the registered agent under section 113(1).”;

- (c) in subsection (5), by inserting after the words “fixed by”, the words “, or in the manner provided in,”; and

- (d) by inserting after subsection (5), the following subsection:

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

the company for the purposes of this Act.”.

Section 110  
amended.

**53.** Section 110 of the principal Act is amended

- (a) in subsection (1)(b), by deleting the word “its” and substituting the word “their”; and
- (b) in subsection (2),
  - (i) in paragraphs (d) and (e), by inserting after the word “appoint” in each paragraph, the words “or remove”,
  - (ii) in paragraph (f), by deleting the word “or” after the semi colon,
  - (iii) in paragraph (g), by inserting after the words “declaration of solvency”, the words “for the purposes of section 198(1)(a)” and by deleting the full stop and substituting “; or”, and
  - (iv) by inserting after paragraph (g), the following paragraph:

“(h) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.”.

Section 112  
amended.

**54.** Section 112 of the principal Act is amended by deleting the words “unless he has consented in writing to be a director” and substituting the words “, or nominated as a reserve director, unless he has consented in writing to be a director or to be nominated as a reserve director”.

Section 113  
amended.

**55.** Section 113 of the principal Act is amended

- (a) in subsection (1), by deleting “thirty days” and substituting “six months”;
- (b) in subsection (2), by deleting the words “resolution of”; and
- (c) by inserting after subsection (6) the following subsections:

“(7) Where a company has only one member who is an individual and that member is also the sole director of the company, notwithstanding anything contained in the memorandum or articles, that sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 111(1) as a reserve director

of the company to act in the place of the sole director in the event of his death.

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

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

**56.** Section 114 of the principal Act is amended

Section 114 amended.

- (a) in subsection (2), by deleting the words “A resolution” and substituting the words “Subject to the memorandum and articles, a resolution”;
- (b) in subsection (4), by deleting the words “the directors of the company” and substituting the words “a resolution of the directors”;
- (c) by inserting the following subsection after subsection (4):

“(5) Subject to the memorandum and articles, subsections (2) and (3) apply to a resolution of directors passed under subsection (4) with the substitution, in subsection (3), of “directors” for “members.”.

**57.** Section 115(1) of the principal Act is amended by deleting the word “registration” and substituting the word “resignation”.

Section 115 amended.

**58.** Section 118(1) of the principal Act is amended

Section 118 amended.

- (a) in paragraph (a), by inserting after the words “of the company”, the words “or who have been nominated as reserve directors of the company”;
- (b) in paragraph (b), by inserting after the words “appointed as a director”, the words “, or nominated as a reserve director,”;

(c) in paragraph (c), by deleting the word “and” after the semi colon; and

(d) by inserting after paragraph (c) the following paragraph:

“(ca) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and”.

Insertion of section 118A.

**59.** The principal Act is amended by inserting after section 118 the following section:

“Annual return for unlimited company not authorised to issue shares.

**118A.** (1) An unlimited company that is not authorised to issue shares shall, on or before 31st March of each year, file an annual return in the approved form of its directors made up to 31<sup>st</sup> December of the previous year.

(2) An annual return filed under subsection (1) shall be certified as correct by a director of the company or by its registered agent.”.

Section 120 amended.

**60.** Section 120(4) of the principal Act is amended by deleting the words “member or members” and substituting the words “shareholder or shareholders”.

Section 122 amended.

**61.** Section 122(c) of the principal Act is amended by deleting the words “or her”.

Section 124 amended.

**62.** Section 124 of the principal Act is amended

(a) in subsection (2), by deleting the words “Regulations shall prescribe the” and substituting the words “Regulations may prescribe”; and

(b) by redesignating the second subsection (5) as subsection (6) and by redesignating subsection (6) as subsection (7).

Section 125 amended.

**63.** Section 125 of the principal Act is amended in subsection (1), by deleting the words from “disclosed to the board” to the end of the subsection and inserting the following paragraphs:

“(a) disclosed to the board in accordance with section 124 prior to the company entering into the transaction; or

(b) not required to be disclosed by virtue of section 124(3).”.

Section 126 amended.

**64.** Section 126 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A)Subject to the memorandum and articles, any one or more directors may convene a meeting of directors.”.

**65.** Section 130 of the principal Act is amended by deleting the words “or consent”. Section 130 amended.

**66.** Section 131(2) of the principal Act is amended Section 131 amended.

(a) by deleting the words “matters specified in section 110(2).” and substituting “following:”; and

(b) by inserting the following paragraphs at the end of the subsection:

“(a) to amend the memorandum or articles;

(b) to change the registered office or agent;

(c) to designate committees of directors;

(d) to delegate powers to a committee of directors;

(e) to appoint or remove directors;

(f) to appoint or remove an agent;

(g) to fix emoluments of directors;

(h) to approve a plan of merger, consolidation or arrangement;

(i) to make a declaration of solvency for the purposes of section 198(1)(a) or to approve a liquidation plan;

(j) to make a determination under section 57(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(k) to authorise the company to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands.”.

**67.** Section 132 of the principal Act is amended Section 132 amended.

(a) in subsection (1)(b), by deleting “another company” and substituting “another body corporate”;

- (b) by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2), a director acts in the best interests of the company if he acts in the best interests of

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

in either case, in the circumstances specified in section 120(2), (3) or (4), as the case may be.”;

- (c) by inserting the following subsections after subsection (3):

“(3A) Expenses, including legal fees, incurred by a director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director to repay the amount if it shall ultimately be determined that the director is not entitled to be indemnified by the company in accordance with subsection (1).

(3B) Expenses, including legal fees, incurred by a former director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the former director to repay the amount if it shall ultimately be determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1) and upon such other terms and conditions, if any, as the company deems appropriate.

(3C) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person’s official capacity and as to acting in another capacity while serving as a director of the company.”; and

- (d) in subsection (5), by deleting “must” and substituting “shall”.

Section 133  
amended.

**68.** Section 133 of the principal Act is amended by deleting “another company” and substituting “another body corporate”.

- 69.** Section 149 of the principal Act is amended Section 149 amended.
- (a) in the marginal note by deleting the word “Transfer” and substituting the words “Limitation on transfer”;
  - (b) by repealing subsection (1) and substituting the following subsection:
 

“(1) The segregated portfolio assets attributable to any segregated portfolio of a segregated portfolio company may only be transferred to another person in accordance with, or as permitted by, this section.”;
  - (c) in subsection (3), by deleting the words “No transfer” and substituting the words “Subject to subsections (8) and (9), no transfer”; and
  - (d) by inserting after subsection (9) the following subsection:
 

“(10) Section 175 shall not apply to a transfer of segregated portfolio assets attributable to a segregated portfolio of a segregated portfolio company made in compliance with this section.”.
- 70.** Section 151(1)(a) is amended by inserting the word “and” after the semi colon. Section 151 amended.
- 71.** Section 156 of the principal Act is amended Section 156 amended.
- (a) in subsection (3), by deleting the words “or a segregated portfolio company”; and
  - (b) in subsection (6), by deleting the words “cell” and substituting the words “segregated portfolio”.
- 72.** Section 157 of the principal Act is amended by inserting after the words “but not from any”, the word “of”. Section 157 amended.
- 73.** Section 159(2)(b)(v) of the principal Act is amended by deleting the words “the form and contents of the accounts” and substituting “the form and contents of the financial statements of segregated portfolio companies and the audit requirements applicable with respect to such financial statements”. Section 159 amended.
- 74.** Section 160(1) of the principal Act is amended by repealing the definition of commencement date and substituting the following: Section 160 amended.

““commencement date” means

(a) in the case of a former Act company, the date that it is re-registered as a BVI business company under Schedule 2, or

(b) in any other case, 1<sup>st</sup> January 2005;”.

Section 165 amended.

**75.** Section 165(1) of the principal Act is amended by deleting the words “this Part” and substituting the words “section 163”.

Section 166 amended.

**76.** Section 166(1)(b) of the principal Act is amended by inserting after the word “section” the word “163.”.

Section 167 amended.

**77.** Section 167 of the principal Act is amended by deleting the words “this section” and substituting the words “section 166”.

Section 170 amended.

**78.** Section 170 of the principal Act is amended

(a) in subsection (2)(c), by deleting the word “asset” and substituting the word “assets”;

(b) in subsection (5)(b), by inserting “and” after the semi colon; and

(c) in subsection (5)(c), by deleting the semi colon at the end of the paragraph and substituting a full stop.

Section 171 amended.

**79.** Section 171(1) of the principal Act is amended

(a) in paragraph (b), by inserting “and” after the semi colon; and

(b) in paragraph (c), by deleting the semi colon at the end of the paragraph and substituting a full stop.

Section 173 amended.

**80.** Section 173 of the principal Act is amended

(a) in subsection (2)(c), by deleting the words “statements contained in the articles of consolidation that are required or authorised to be contained in the memorandum and articles of a company under this Act,” and substituting the words “memorandum and articles filed with the articles of consolidation”;

(b) in subsection (3)(a), by inserting after the words “member, director”, the word “, officer”; and

(c) in subsection (3)(b), by inserting after the words “member, director” where they first appear, the word “, officer”.

- 81.** Section 174(2)(b)(iv) of the principal Act is amended by inserting after the words “no certificate of merger”, the words “or consolidation”. Section 174 amended.
- 82.** Section 177 of the principal Act is amended Section 177 amended.
- (a) in subsection (9), by deleting the words “under his hand and seal” and substituting the words “in the approved form”; and
- (b) by repealing subsection (10).
- 83.** Section 179(4) of the principal Act is amended by deleting the words “or consented to in writing” and substituting the words “, or consented in writing to,”. Section 179 amended.
- 84.** The principal Act is amended by inserting after section 179, the following section: Insertion of section 179A.
- “Schemes of arrangement.
- 179A.** (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.
- (2) An application under subsection (1) may be made by
- (a) the company;
- (b) a creditor of the company;
- (c) a member of the company;
- (d) if the company is in administration within the meaning of the Insolvency Act, 2003, by the administrator;
- (e) if the company is in voluntary liquidation within the meaning of section 202, by the voluntary liquidator; or
- (f) if an Insolvency Act liquidator has been appointed, by that liquidator.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company or, in the case of a company in voluntary liquidation or in liquidation under the Insolvency Act, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under subsection (3) shall have no effect until a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to every copy of the company's memorandum issued after the order has been made.

(6) In this section, "arrangement" includes a reorganisation of the company's 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.

(7) The Regulations may provide for the information and explanations to be contained in, or to accompany, a notice calling a meeting under this section.

(8) Where the Court makes an order with respect to a company under this section, sections 169 to 179 shall not apply to the company.

(9) A company that contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of \$5,000."

Section 180  
amended.

**85.** Section 180 of the principal Act is amended

- (a) in subsection (1), by deleting the word "authorise" and substituting the word "permit"; and
- (b) in subsection (2)(c), by inserting before the words "an

arrangement”, the word “into”.

**86.** Section 181 of the principal Act is amended

Section 181  
amended.

- (a) in subsection (1)(d), by deleting the words “section 180(2)” and substituting the words “section 180”; and
- (b) in subsection (3)(b), by deleting the word “not”.

**87.** Section 182(1)(c) of the principal Act is amended by inserting after the words “certificate of continuation”, the words “in the approved form”.

Section 182  
amended.

**88.** Section 184 of the principal Act is amended

Section 184  
amended.

- (a) by repealing subsections (3) and (4) and substituting the following subsections:

“(3) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside the Virgin Islands may file a notice of the company’s continuance in the approved form.

(4) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, he shall

- (a) issue a certificate of discontinuance of the company in the approved form;
- (b) strike the name of the company off the Register of Companies with effect from the date of the certificate of discontinuance; and
- (c) publish the striking off of the company in the *Gazette*.

(4A) A certificate of discontinuance issued under subsection (4) is prima facie evidence that

- (a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and
- (b) the company was discontinued on the date specified in the certificate of discontinuance.”.

**89.** The principal Act is amended by inserting after Part X the following Part:

**“PART XA**

**MEMBERS’ REMEDIES**

Interpretation for  
this Part.

**184A.** 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
- (c) an unlimited member of an unlimited company.

Restraining or  
compliance order.

**184B.** (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 directing the company or director to comply with, or 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.

**184C.** (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to

- (a) bring proceedings in the name and on behalf of that company; or
- (b) intervene in proceedings to which the company is a party for the purpose of

continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account

- (a) whether the member is acting in good faith;
- (b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;
- (c) whether the proceedings are likely to succeed;
- (d) the costs of the proceedings in relation to the relief likely to be obtained; and
- (e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under 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) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under 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.

**184D.** (1) If the Court grants leave to a member to bring or intervene in proceedings under section 184C, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(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  
when leave granted  
under section 184C.

**184E.** The Court may, at any time after granting a member leave under section 184C, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including

- (a) an order authorising the member or any other person to control the proceedings;
- (b) an order giving directions for the conduct of the proceedings;
- (c) an order that the company or its directors provide information or assistance in relation to the proceedings; and
- (d) an order directing that any amount ordered to be paid by a defendant in the

proceedings must be paid in whole or in part to former and present members of the company instead of to the company.

Compromise, settlement or withdrawal of derivative action.

**184F.** No proceedings brought by a member or in which a member intervenes with the leave of the Court under section 184C may be settled or compromised or discontinued without the approval of the Court.

Personal actions by members.

**184G.** A member of a company may bring an action against the company for breach of a duty owed by the company to him as a member.

Representative actions.

**184H.** 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.”.

Prejudiced members.

**184I.** (1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this section.

(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) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;
- (b) requiring the company or any other person to pay compensation to the member;
- (c) regulating the future conduct of the company's affairs;
- (d) amending the memorandum or articles of the company;
- (e) appointing a receiver of the company;
- (f) appointing a liquidator of the company under section 159(1) of the Insolvency Act on the grounds specified in section 162(1)(b) 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.”.

Section 168 amended.

**90.** Section 187 of the principal Act is amended by inserting after the words “as a foreign company”, the words “in the approved form”.

Section 196 amended.

**91.** Section 196(2) of the principal Act is amended

- (a) by repealing subsection (2) and substituting the following:

“(2) A foreign company that, immediately before 30<sup>th</sup> June 2006, is carrying on business in the Virgin Islands shall, if it continues to carry on business in the Virgin Islands after that date, apply for registration under this Part on or before 31<sup>st</sup> July 2006.”;

- (b) in subsection (4), by deleting “, within 30 days of the effective

date,” and substituting “on or before 31<sup>st</sup> March 2006”; and

- (c) in subsection (5), by repealing paragraph (b) and substituting the following:

“(b) 31<sup>st</sup> July 2006.”.

- 92.** Section 198(3) of the principal Act is amended by deleting the words “no less than six weeks earlier than” and substituting the words “no more than six weeks prior to”. Section 198 amended.
- 93.** Section 199 of the principal Act is amended by inserting after subsection (4) the following subsection: Section 199 amended.
- “(5) The Regulations may provide for descriptions or categories of individuals who are eligible to be appointed as the voluntary liquidator of a company under this section.”.
- 94.** Section 202 of the principal Act is amended by inserting before the words “section 208”, the words “section 207A or”. Section 202 amended.
- 95.** Section 205(3)(a) of the principal Act is amended by inserting the word “and” after the semi colon. Section 205 amended.
- 96.** The principal Act is amended by inserting after section 207 the following section: Insertion of section 207A.

“Termination of voluntary liquidation.

**207A.** (1) The Court may, at any time after the appointment of a voluntary liquidator under section 199, make an order terminating the liquidation if it is satisfied that it would be just and equitable to do so.

(2) An application under subsection (1) may be made by the voluntary liquidator or by a director, member or creditor of the company.

(3) Before making an order under subsection (2), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(5) Where the Court makes an order under subsection (1), the company ceases to be in voluntary liquidation and the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.”.

Section 208  
amended.

**97.** Section 208 of the principal Act is amended

- (a) in subsection (1)(b), by deleting the words “under his hand and seal” and substituting the words “in the approved form”;
- (b) in subsection (2)
  - (i) by deleting the words “under his hand and seal certifying that the company has been dissolved,” and substituting the words “under subsection (1), the dissolution of the company is effective from the date of the issue of the certificate.”, and
  - (ii) by repealing paragraphs (a) and (b).

Section 213  
amended.

**98.** Section 213(7) of the principal Act is amended by inserting after the word “*Gazette*”, the words “under subsection (3)”.

Section 217  
amended.

**99.** Section 217(4) of the principal Act is amended by inserting before the words “a creditor”, the word “or” and by inserting after the word “thereof”, a comma.

Section 218  
amended.

**100.** Section 218 of the principal Act is amended

- (a) in the marginal note, by deleting the word “Restoration” and substituting the words “Declaration that dissolution void and restoration”;
- (b) in subsection (1), by deleting the words from “to restore the company” to the end of the subsection and substituting the words “in accordance with subsection (1A) to declare the dissolution of the company void and restore the company to the Register.”;
- (c) by inserting after subsection (1) the following subsection:

“(1A)An application under subsection (1)

- (a) may be made by the company or by a creditor, member or liquidator of the company; and

- (b) shall be made within ten years of the date that the company was dissolved.”;
- (d) in subsection (2), by inserting before the words “restore the company”, the words “declare the dissolution of the company void and”; and
- (e) in subsection (3), by inserting before the words “struck off the Register”, the words “dissolved or”.

**101.** Section 223 of the principal Act is amended by inserting after subsection (3) the following subsections:

Section 223  
amended.

“(4) The Regulations may define an affiliated company for the purposes of this Part.

(5) An applicant under this section shall not be required to give security for costs.”.

**102.** Section 224(2) of the principal Act is amended

Section 224  
amended.

- (a) by deleting the words “by order, at any time” and substituting the words “at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to”;
- (b) in paragraph (i), by deleting the word “and” after the semi colon;
- (c) in paragraph (j), by deleting the full stop and substituting the word “; or”; and
- (d) by inserting after paragraph (j) the following paragraph:

“(k) require the company to pay the costs of the investigation in part or in full.”.

**103.** Section 226(2) of the principal Act is amended by inserting after the words “at the hearing”, the words “and has a right to be represented by a legal practitioner appointed by him for the purpose”.

Section 226  
amended.

**104.** Section 228 of the principal Act is amended

Section 228  
amended.

- (a) in the marginal note, by deleting the words “Absolute privilege” and substituting the word “Privilege”;
- (b) by redesignating the existing provision as subsection (1); and

(c) by inserting after the existing provision, the following subsection:

“(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his client.”.

Insertion of section  
228A.

**105.** The principal Act is amended by inserting at the beginning of Part XIV before section 229, the following section:

“Company Law  
Review Advisory  
Committee.

**228A.** (1) The Minister shall, with the advice of the Commission, establish a committee to be known as the “Company Law Review Advisory Committee”.

(2) The Minister shall, with the advice of the Commission, appoint as members of the Committee such persons having knowledge and experience of company law as it considers appropriate.

(3) The functions of the Company Law Review Advisory Committee shall be

(a) to keep this Act, and such other enactments relevant to company law as may be specified by the Commission, under review;

(b) to make such recommendations as it considers appropriate to the Commission for changes to this Act and to any other enactments specified by the Commission under paragraph (a); and

(c) to make such recommendations as it considers appropriate to the Commission for the development and reform of company law in the Virgin Islands;

(4) The Chairman of the Committee shall be the Managing Director of the Commission or such other person as he may designate.

(5) The Regulations shall specify rules of procedure for the Committee.”.

Section 230  
amended.

**106.** Section 230 of the principal Act is amended

- (a) in subsection (2), by deleting the words “device of facility” and substituting the words “device or facility”; and
- (b) in subsections (4) and (5), by inserting the word “and” after the semi colon at the end of paragraph (a) of each subsection.

**107.** Section 233(1)(c) of the principal Act is amended by inserting after the word “continuation,” in both places in which it occurs, the word “discontinuance,”. Section 233 amended.

**108.** Section 235 of the principal Act is amended Section 235 amended.

- (a) in subsection (1), by deleting the words “under his hand and seal” and substituting the words “in the approved form”; and
- (b) by deleting the words “the process of being wound up and dissolved” and substituting the words “voluntary liquidation”.

**109.** Section 236 of the principal Act is amended by inserting after subsection (2), the following subsection: Section 236 amended.

“(3) Unless this Act or the Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person.”.

**110.** Schedule 1 of the principal Act is amended Amendment of Schedule 1.

- (a) by inserting in the table set out in Part I in the correct numerical order the following fees:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
21(2)	For an application for a change of name	25.00
118A	For filing annual return by unlimited company not authorised to issue shares	50.00
192(1)	For filing annual return by foreign company	50.00

- (b) in column 2 of the table set out in Part 1, in respect of the fee payable under section 7(1)
  - (i) in paragraphs (a) and (b), by deleting “or (d)” and substituting “or (e)”, and

- (ii) in paragraph (c), by deleting “or (e)” and substituting “or (d)”;
- (c) in Column 2 of the table set out in Part I, in respect of the fee payable under section 40, by deleting the words “company authorised” and substituting the words “company is authorised”;
- (d) in Column 2 of the table set out in Part I, in respect of the fees payable under section 171(3), 172(7), 177(8) and 182(1)
  - (i) by deleting “or (d)” in each place where it occurs and substituting “or (e)”, and
  - (ii) by deleting “or (e)” in each place where it occurs and substituting “or (d)”;
- (e) in Column 2 of the table set out in Part I, in respect of annual fees payable
  - (i) by deleting “or (d)” in both places where it occurs and substituting “or (e)”, and
  - (ii) by deleting “or (e)” and substituting “or (d)”;
- (f) in Column 3 of the table set out in Part I
  - (i) in respect of the fee payable for the registration of a notice of change of registered office or registered agent under section 92(2), by deleting the number “25.00” and substituting the number “50.00”,
  - (ii) in respect of the fee payable for the restoration of the name of a company to the Register under section 217 where the application is made 6 months or less after the date that the name was struck from the Register, by deleting the number “350.00” and substituting the number “375.00”, and
  - (iii) in respect of the fee payable for the restoration of the name of a company to the Register under section 217 where the application is made more than 6 months after the date that the name was struck from the Register, by deleting the number “750.00” and substituting the number “775.00”; and
- (g) in Part III

- (i) in paragraph 1, by deleting the words “company Part I” and substituting the words “company under Part I”,
- (ii) in paragraph 2, by deleting the words “Any fee liable to be paid under sections” and substituting the words “In the case of a company specified in section 5(a), (c) or (e), any fee liable to be paid under section”,
- (iii) in paragraphs 2(a) and 2(b), by deleting the words “specified in section 5(a), (c) or (d)”, and
- (iv) by inserting after paragraph 5 the following paragraph:
  - “6. For the purposes of this Schedule, a company that is authorised to issue an unlimited number of shares shall be regarded as a company that is authorised to issue more than 50,000 shares.”.

**111.** Schedule 2 of the principal Act is repealed and replaced with the provisions set out in the Schedule to this Act.

Repeal and replacement of Schedule 2.

**112.** The amendment to section 102 of the principal Act effected by section 48 of this Act shall not have effect with respect to a company incorporated under this Act between 1<sup>st</sup> January and 31<sup>st</sup> December 2005 until 1<sup>st</sup> July 2006.

Transitional provisions.

## **SCHEDULE**

[Section 111]

### **Substituted Schedule 2 to the principal Act**

## **“SCHEDULE 2**

[Section 248]

### **TRANSITIONAL PROVISIONS**

#### **PART I PRELIMINARY**

##### **Interpretation.**

- 1.** In this Schedule, “the transition period” means the period from 1<sup>st</sup> January 2005 to 31<sup>st</sup> December 2006.

#### **PART II APPLICATIONS TO RE-REGISTER FORMER ACT COMPANIES**

##### **Application by former Act company to re-register under this Act.**

- 2.** (1) A former Act company that, at the date of the application, is on the appropriate Register maintained under the Companies Act or the International Business Companies Act, may at any time during the transition period apply to the Registrar to re-register as a company under this Act.

(2) An application filed with the Registrar by a former Act company for re-registration as a company shall

- (a) be, and contain the information specified, in the approved form; and
- (b) be accompanied by
  - (i) a memorandum that, subject to subparagraphs (3), (4) and (5), complies with section 9 and by articles complying with this Act (“the new memorandum and articles”),

(ii) a document in the approved form signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration, and

(iii) such other documents as may be prescribed.

(3) The memorandum and articles filed under subparagraph (2) shall be signed by the registered agent as the applicant to re-register.

(4) In addition to the matters required under section 9, the memorandum filed under subparagraph (2) shall state

(a) the date that the company was first incorporated and, if appropriate, the date with effect from which it was continued under the International Business Companies Act;

(b) whether, immediately prior to its re-registration under this Act, it was governed by the Companies Act or by the International Business Companies Act .

(5) The memorandum filed under subparagraph (2) shall state the registered office and registered agent of the company at the time of the application to re-register under this paragraph.

(6) Subject to subparagraph (7), an application to re-register under this paragraph shall be authorised, and the new memorandum and articles shall be approved, by

(a) a resolution of the members of the company; or

(b) unless the original memorandum or articles provide otherwise, by a resolution of directors.

(7) The directors of a company shall not have any power to approve the new memorandum and articles to the extent that they amend the memorandum and articles of the company in effect at the date of the application (“the original memorandum and articles”), unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.

### **Re-registration by the Registrar.**

3. (1) If he is satisfied that the requirements of this Act in respect of re-registration have been complied with, the Registrar shall, upon receipt of an application and the other documents specified in paragraphs 2

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

(2) Subject to subparagraph (3), a certificate of re-registration is conclusive evidence that

- (a) all the requirements of this Schedule as to re-registration have been complied with; and
- (b) the company is re-registered under this Act on the date specified in the certificate of re-registration.

(3) The unique number allotted to a company under subparagraph (1) may be the number previously allocated by the Registrar to the company as a former Act company.

(4) Except as otherwise provided in this Act, a company that is re-registered under this Part shall be subject to this Act as if it was a company incorporated under this Act and the transitional provisions specified in Part IV of this Schedule do not apply to such a company.

### **PART III**

#### **AUTOMATIC RE-REGISTRATION OF FORMER ACT COMPANIES**

##### **Former Act companies automatically re-registered under this Act.**

4. (1) Subject to the provisions of this paragraph, every former Act company
- (a) that, on 31<sup>st</sup> December 2006, is on the appropriate Register maintained under the Companies Act or the International Business Companies Act; and
  - (b) that has not made application to be re-registered under Part II on or before the last day of the transition period;

shall be deemed to be re-registered under this Act on 1<sup>st</sup> January 2007.

(2) The Registrar shall determine every application made under Part II on or before 28<sup>th</sup> February 2007.

(3) In the case of a certificate of re-registration issued by the Registrar on or after 1<sup>st</sup> January 2007 in respect of an application made on or before the last day of the transition period, the re-registration shall have effect on 31<sup>st</sup> December 2006 and the certificate of re-registration shall be dated accordingly.

(4) If the Registrar refuses or fails to determine an application made on or before the last day of the transition period by 28<sup>th</sup> February 2007, the company that made the qualifying application shall be deemed to have been automatically re-registered on 1<sup>st</sup> January 2007 under subparagraph (1).

(5) Where a company is automatically re-registered under this paragraph, the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(6) Part IV of this Schedule applies to a former Act company that is automatically re-registered under this Part.

(7) The unique number allotted to a company under subparagraph (5) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as a former Act company.

(8) Except as otherwise provided in this Act, a company that is automatically re-registered under this Part shall be subject to this Act as if it was a company incorporated under this Act, except to the extent specified in Part IV of this Schedule.

**Certificate of registration where former Act company re-registered automatically.**

5. (1) Where a former Act company is automatically re-registered under this Part, the Registrar shall not be required to issue a certificate of re-registration to the company unless it applies for a certificate and pays the appropriate fee.

(2) A certificate of re-registration issued under subparagraph (1) shall state that the former Act company was automatically re-registered under this Act.

**PART IV**  
**TRANSITIONAL PROVISIONS APPLYING TO FORMER ACT COMPANIES**  
**THAT ARE AUTOMATICALLY RE-REGISTERED UNDER PART III**

**Division 1 - Preliminary**

**Scope of this Part.**

6. This Part applies to a former Act company that is automatically re-registered under Part III of this Schedule.

**Interpretation for this Part.**

7. In this Part, unless the context otherwise requires

“authorised capital” of a company means the sum of the aggregate par value of all shares with par value which the company is authorised by its memorandum to issue plus the amount, if any, stated in its memorandum as authorised capital to be represented by shares without par value which the company is authorised by its memorandum to issue;

“capital” of a company means the sum of the aggregate par value of all outstanding shares with par value of the company and shares with par value held by the company as treasury shares plus

- (a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares, and
- (b) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

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

## Division 2 - Memorandum

### Memorandum.

8. (1) In place of the requirements specified in section 9, the memorandum of a former Act company incorporated under the International Business Companies Act to which this Part applies must include the following:

- (a) the name of the company;
- (b) the address within the Virgin Islands of the registered office of the company;
- (c) the name and address within the Virgin Islands of the registered agent of the company;
- (d) the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) a statement of the authorised capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
- (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;
- (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the memorandum;
- (i) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as bearer shares unless the directors are authorised to determine at their discretion

whether shares are to be issued as registered shares or bearer shares and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or bearer shares as they may determine by resolution of directors;

- (j) whether registered shares may be exchanged for bearer shares and whether bearer shares may be exchanged for registered shares; and
- (k) if bearer shares are authorised to be issued, the manner in which a required notice to members is to be given to the holders of bearer shares.

(2) For the purposes of subparagraph (1)(d), if the memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the memorandum.

(3) In the case of a former Act company that is incorporated under the Companies Act, the capital stated in its memorandum of association in effect at the date of its application to re-register or at the date of its automatic re-registration, as the case may be, shall be its authorised capital for the purposes of this Part.

### **Division 3 - Capital, redemptions and dividends**

#### **Scope of this Division**

**9.** Paragraphs 10 to 23 apply to a company to which this Part applies in place of sections 56 to 65.

#### **Shares to be fully paid.**

**10.** No share in a company may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in paragraph 3.

#### **Kind of consideration for shares.**

**11.** Subject to the memorandum or articles, each share in a company shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a

promissory note or other binding obligation to contribute money or property, or any combination thereof.

**Forfeiture of shares.**

**12.** (1) The memorandum or articles, or an agreement for the subscription of shares, of a company may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the memorandum or articles, or in an agreement for the subscription of shares of a company providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

(3) The written notice referred to in subparagraph (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 notice 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, by resolution of directors forfeit and cancel the shares to which the notice relates.

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

**Amount of consideration for shares.**

**13.** (1) Subject to the memorandum or articles, shares in a company may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

(2) A share issued by a company upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

**Authorised capital in several currencies.**

**14.** (1) The authorised capital, if any, of a company may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Commission may issue guidelines with respect to the calculation of fees payable pursuant to Part V of this Schedule for companies with an authorised capital stated in a currency other than United States dollars.

**Capital and surplus accounts.**

**15.** (1) Upon the issue by a company of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to the memorandum or articles, upon the issue by a company of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(3) Upon the disposition by a company of a treasury share, the consideration in respect of the share is added to surplus.

**Dividend of shares.**

**16.** (1) A share issued as a dividend by a company shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

(2) In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of distribution.

(3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionally smaller par value does not constitute a dividend of shares.

### **Increase or reduction of share capital.**

**17.** (1) Subject to the memorandum or articles, a company may amend its memorandum to increase or reduce its authorised capital, and in connection therewith, the company may

- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under (a) and (b).

(2) Where a company reduces its authorised capital under subparagraph (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.

(3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorised capital.

### **Division and combination.**

**18.** (1) A Company may amend its memorandum

- (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or
- (b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are divided or combined under subparagraph (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

### **Acquisition of own shares**

**19.** (1) Subject to the memorandum or articles, a company may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.

(2) Subject to subparagraph (1), a company may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is

permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of

- (a) the provisions of the memorandum or articles of the company;
- (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or
- (c) the subscription agreement for the issue of the shares.

(3) No purchase, redemption or other acquisition permitted under subparagraph (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

(4) A determination by the directors under subparagraph (3) is not required where shares are purchased, redeemed or otherwise acquired

- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;
- (b) by virtue of a transfer of capital pursuant to paragraph 12(1)(b);
- (c) by virtue of the provisions of section 179; and
- (d) pursuant to an order of the court.

(5) Subject to the memorandum or articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital, in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

(6) A company may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of

- (a) its memorandum or articles; or
- (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.

**Treasury shares disabled.**

**20.** Where shares in a company

- (a) are held by the company as treasury shares; or
- (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of the other company,

the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Schedule except for purposes of determining the capital of the first company.

**Increase or reduction of capital**

**21.** (1) Subject to the memorandum or articles and subject to subparagraphs (2) and (3), the capital of a company may, by a resolution of members or by resolution of directors, be

- (a) increased by transferring an amount out of the surplus of the company to capital; or
- (b) reduced by transferring an amount out of capital of the company to surplus.

(2) No reduction of capital shall be effected under subparagraph (1) that reduces the capital of the company to an amount that is less than the sum of

- (a) the aggregate par value of
  - (i) all outstanding shares with par value, and
  - (ii) all shares with par value held by the company as treasury shares; and
- (b) the aggregate of the amounts designated as capital of

- (i) all outstanding shares without par value, and
- (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(3) No reduction of capital shall be effected under subparagraph (1) unless the directors determine that immediately after the reduction

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

### **Dividends**

**22.** (1) Subject to the memorandum or articles, a company may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Dividends shall only be declared and paid out of surplus.

(3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

### **Appreciation of assets**

**23.** Subject to the memorandum or articles, a company may, by a resolution of directors, include in the computation of surplus for any purpose under this Part the net unrealised appreciation of the assets of the company, and, in the absence of

fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved.

#### **Division 4 – Immobilisation of Existing Bearer Shares**

##### **Scope of this Division**

**24.** This Division applies to a former Act company incorporated under the International Business Companies Act to which this Part applies in addition to Part III Division 5 of the Act.

##### **Interpretation for this Part**

**25.** In this Part

“authorised custodian” means a person approved by the Commission as an authorised custodian under section 50A(1) or section 50A(2) of the Financial Services Commission Act, 2001;

“custodian” means an authorised custodian or a recognised custodian;

“effective date means 1<sup>st</sup> January, 2005;

“existing bearer share” means a share in a company that was issued as or converted to a bearer share prior to the effective date and that remains a bearer share in the company on the effective date;

“recognised custodian” means a person recognised by the Commission as a custodian under section 50B of the Financial Services Commission Act, 2001; and

“transition date” means 31<sup>st</sup> December, 2010.

##### **Issue of bearer shares and conversion of registered shares after effective date**

**26.** (1) Every existing bearer share of a company shall, on or before the transition date

- (a) be deposited with a custodian who has agreed to hold the share; or
- (b) be converted to, or exchanged for, a registered share.

(2) Subparagraph (1) does not apply to a bearer share that, before the transition date

- (a) is cancelled; or
- (b) is redeemed, purchased or otherwise acquired by the company as a treasury share.

(3) An existing bearer share in a company is deemed not to have been deposited with a custodian for the purposes of subparagraph (1) until the registered agent of the company has received

- (a) in the case of a bearer share deposited with an authorised custodian, notification of the deposit from the authorised custodian in accordance with section 72(1); or
- (b) in the case of a bearer share deposited with a recognised custodian, the proof of the deposit of the share and the notice required to be sent by section 71(3).

(4) The Court may, on the application of the company or of a person interested in a bearer share, extend the period specified in subparagraph (1) by such further period or periods not exceeding one year in total as it considers fit.

(5) On an existing bearer share deposited with a custodian in accordance with subparagraphs (1)(a) and (3), it shall for all purposes of this Part cease to be regarded as an existing bearer share and shall thereafter be treated as if it had been issued after the effective date.

### **Redemption of existing bearer shares**

**27.** (1) Where an existing bearer share in a company is not deposited with a custodian who has agreed to hold the share on or before the transition date, the company may, notwithstanding sections 59 to 62 or any provision in the memorandum or articles, in any shareholders' agreement or in any other agreement, redeem the share.

(2) Subject to subparagraph (3), sections 176(3) and 179 apply to the redemption of bearer shares under subparagraph (1).

(3) Where a company is unable, on making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share

- (a) it is not required to give the member notice under section 176(3); and
- (b) the company shall hold the proceeds of redemption on trust for the owner of the bearer share.

## **Application for appointment of liquidator**

**28.** Where, after the transition date, a company has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Part, the Commission may apply to the Court for the appointment of a liquidator of the company under the Insolvency Act.

## **Division 5 - Fees**

### **Scope of this Division**

**29.** The fees in this Division apply to a company to which this Part applies in place of the fees set forth in Schedule 1 of the Act.

### **Company incorporated in first six months of year**

**30.** Subject to paragraph 33, a company that is incorporated in the first 6 months of a year shall on or before 31st May in the following year and in each succeeding year pay to the Registrar an annual fee as follows:

- (a) \$350.00 if on the annual fee payment date
  - (i) the authorised capital of the company does not exceed \$50,000,
  - (ii) all the shares of the company have a par value, and
  - (iii) the company is prohibited by its memorandum from issuing bearer shares;
- (b) \$1,100.00 if either or both of the following apply to the company on the annual fee payment date
  - (i) the authorised capital of the company exceeds \$50,000, or
  - (ii) the company is not prohibited by its memorandum from issuing bearer shares; and
- (c) \$350.00 if, on the annual fee payment date, the company is prohibited by its memorandum from issuing bearer shares and
  - (i) its authorised capital does not exceed \$50,000 and some or all of its shares have no par value, or

- (ii) it has no authorised capital and all its shares have no par value.

**Company incorporated in second six months of year**

**31.** Subject to paragraph 33, a company that is incorporated in the second 6 months of a year shall on or before 30th November in the following year and in each succeeding year pay to the Registrar an annual fee as follows

- (a) \$350.00 if on the annual fee payment date
  - (i) the authorised capital of the company does not exceed \$50,000,
  - (ii) all the shares of the company have a par value, and
  - (iii) the company is prohibited by its memorandum from issuing bearer shares;
- (b) \$1,100.00 if either or both of the following apply to the company on the annual fee payment date
  - (i) the authorised capital of the company exceeds \$50,000, or
  - (ii) the company is not prohibited by its memorandum from issuing bearer shares; and
- (c) \$350.00 if, on the annual fee payment date, the company is prohibited by its memorandum from issuing bearer shares and
  - (i) its authorised capital does not exceed \$50,000 and some or all of its shares have no par value, or
  - (ii) it has no authorised capital and all its shares have no par value.

**Company not prohibited from issuing bearer shares**

**32.** (1) Notwithstanding paragraphs 30 and 31, during the period from 1<sup>st</sup> January 2005 to 31<sup>st</sup> December 2007 the annual fee payable by a company that on 31<sup>st</sup> December 2004 was not prohibited by its memorandum from issuing bearer shares is

- (a) \$1,100.00 if, on the annual fee payment date its authorised capital exceeds \$50,000; or

(b) in any other case, \$350.00.

(2) Notwithstanding paragraphs 30 and 31 and subject to paragraph, during the period from 1<sup>st</sup> January 2008 to 31<sup>st</sup> December 2010, the annual fee payable by a company that on 31<sup>st</sup> December 2004 was not prohibited by its memorandum from issuing bearer shares is

(a) \$1,350.00 if, on the annual fee payment dates its authorised capital exceeds \$50,000;

(b) in any other case, \$600.00.

(3) Notwithstanding subparagraph 2, during the period from 1<sup>st</sup> January 2008 to 31<sup>st</sup> December 2010 the annual fee payable by a company that on 31<sup>st</sup> December 2004 was not prohibited by its memorandum from issuing bearer shares if all the company's issued bearer shares are held by a recognised custodian, the registered office and head office of which are situated in the Virgin Islands, is

(a) \$1,250.00 if, on the annual fee payment date the authorised capital exceeds \$50,000; or

(b) in any other case, \$500.00.

### **Increase in annual fee**

**33.** (1) If a company fails to pay the amount due as the annual fee under paragraphs 30 to 32, as the case may be, by the time specified in paragraph 30 or 31, as the case may be, then the annual fee increases by 10 per cent of that amount.

(2) If a company fails to pay the amount due as an increased annual fee under subparagraph (1) at or before the expiration of a period of 2 months from the time specified in paragraph 30 or 31, as the case may be, then the annual fee increases by 50 per cent of that amount.

### **Company in liquidation**

**34.** Paragraphs 30 to 33 do not apply to a company in liquidation.

### **Notice of increase or decrease in authorised capital**

**35.** There shall be paid to the Registrar upon the filing of any notice of an increase or a decrease in authorised capital pursuant to paragraph 21 the following fees:

(a) \$750.00 in the case of an increase of authorised capital from \$50,000 or less to more than \$50,000; and

- (b) in all other cases, \$25.00.

**Schedule 1 of this Act to apply**

**36.** All other fees payable by a company to which the provisions of this Schedule apply shall be as set forth in Part I of Schedule 1 of this Act and for this purpose

- (a) any reference to “is authorised to issue no more than 50,000 shares” shall be deemed to be a reference to “has an authorised capital of no more than \$50,000”; and
- (b) any reference to “is authorised to issue more than 50,000 shares” shall be deemed to be a reference to “has an authorised capital of more than \$50,000”.

**PART V  
MISCELLANEOUS PROVISIONS**

**Effect of re-registration under this Act**

**37.** (1) A former Act company that is re-registered, whether by the Registrar pursuant to an application made under Part II or whether automatically under Part III, continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not

- (a) prejudice or affect its identity;
- (b) affect its assets, rights or obligations; or
- (c) affect the commencement or continuation of proceedings by or against the company.

(2) Subject to subparagraph (1), a former Act company that is re-registered under this Schedule shall, from the date of its re-registration, be treated as a company incorporated under this Act.

**Seals of re-registered companies**

**38.** Where, immediately before its re-registration under Part II or Part III of this Schedule, a former-Act company has a common seal, that common seal shall, for all purposes, be considered to be a valid common seal for the purposes of this Act.

### **Company may disapply Part IV of this Schedule**

**39.** A company that is re-registered as a company to which Part IV applies, may by filing

- (a) a memorandum and articles that comply with this Act; and
- (b) a notice in the approved form;

elect to be a company to which this Act applies and Part IV will no longer apply to the company.

### **Restoration of former Act companies struck off a register maintained under a former Act**

**40.** (1) Every application to restore a former Act company that has been struck off a Register kept under a former Act but not dissolved, made on or after 1<sup>st</sup> January 2006, whether to the Registrar or to the Court, shall be made under, and determined in accordance with, this Act as if the former Act company had been a company struck off the Register under this Act.

(2) Where, pursuant to an application made under sub-paragraph (1), a company is restored, it shall be restored to the Register of Companies maintained under this Act.

### **Restoration of dissolved former Act companies**

**41.** (1) Application may be made to the Court under this Act to rescind the dissolution of a former Act company dissolved under a former Act as if it was a company dissolved under this Act on the date that it was dissolved under the former Act.

- (2) An application made under sub-paragraph (1)
  - (a) shall be made within ten years of the dissolution of the former Act company under the former Act;
  - (b) shall be determined in accordance with this Act.

(3) If the dissolution of a former Act company is rescinded in accordance with this paragraph, the company shall be restored to the Register of Companies maintained under this Act.

## **Registrar and Deputy and Assistant Registrars of Companies.**

**42.** The person holding office as Registrar of Companies under the Companies Act (Cap.285) and every person holding office as a Deputy Registrar of Companies or an Assistant Registrar of Companies under that Act, immediately before the commencement of this Act, is deemed to have been appointed as Registrar of Corporate Affairs or as a Deputy or an Assistant Registrar of Corporate Affairs, as the case may be, in accordance with section 229(1) on the same terms as they were appointed under that Act.

## **References to companies in other enactments**

**43.** A reference in any enactment to a company incorporated or registered under a former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated or re-registered under this Act.

## **International business companies authorised to issue bearer shares**

**44.** (1) This paragraph applies in respect of a former Act company re-registered under this Act that, immediately before its re-registration,

- (a) was an international business company; and
- (b) was authorised by its memorandum on 31<sup>st</sup> December 2004 to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

(2) Paragraph 2 of Part III of Schedule 1 of this Act shall have no application to a company to which this paragraph applies during the period from 1<sup>st</sup> January 2005 to 31<sup>st</sup> December 2007.

(3) Paragraph 2 of Part III of Schedule 1 of this Act shall apply to a company to which this paragraph applies during the period from 1<sup>st</sup> January 2008 to 31<sup>st</sup> December 2010 with the following amendments:

- (a) it shall apply only in respect of an annual fee due under section 236;
- (b) the fee of \$450.00 specified in subparagraph (a)(i) is reduced to \$250.00;
- (c) the fee of \$750.00 specified in subparagraph (a)(i) is reduced to \$450.00; and
- (d) subparagraph (b) is deleted.

(4) Paragraph 2 of Part III of Schedule 1 shall apply to a company to which this paragraph applies from 1<sup>st</sup> January 2011, except that it shall apply only in respect of an annual fee due under section 236.”.

Passed by the Legislative Council this 20<sup>th</sup> day of December, 2005.

V. INEZ ARCHIBALD,  
Speaker.

ALVA MC CALL  
Ag. Clerk of the Legislative Council.