



ANGUILLA

**REVISED STATUTES OF ANGUILLA**

**CHAPTER I20**

**INTERNATIONAL BUSINESS  
COMPANIES ACT**

Showing the Law as at 15 December 2006

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates Act 6/2006, in force 16 November 2006

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**INTERNATIONAL BUSINESS COMPANIES ACT**

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**INTERNATIONAL BUSINESS COMPANIES ACT**

## PART 1

## INTERPRETATION

**Interpretation**

1. (1) In this Act—

“Anguilla company” means a company incorporated or continued under this Act, a company incorporated or continued under the Companies Act or a company formed or continued under the Limited Liability Companies Act;

“approved”, in relation to a certificate or other document, means approved by the Registrar under section 126;

“articles” means—

- (a) the articles of incorporation, articles of amendment, articles of merger, articles of consolidation and articles of dissolution; and
- (b) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as an international business company under this Act;

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

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;

*(Act 6 of 2006 s. 2)*

“capital” of an international business 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;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

*(Act 6 of 2006 s. 2)*

- “continued” means continued under Part 9;
- “Court” means the High Court;
- “custodian” has the meaning specified by regulation under section 27;  
(Act 6 of 2006 s. 2)
- “determination of solvency” means a determination of the directors made under section 29(2), section 31(3) or section 32(3);
- “dollar” or “\$” means a dollar in the currency of the United States of America;
- “incorporator”, in relation to an international business company, means a person who signs the articles of incorporation of the company;
- “international business company” means a company that is incorporated or continued under this Act;
- “Judge” means a Judge of the Court;
- “Minister” means the Minister responsible for finance;
- “person” includes a company, trust, partnership, a limited liability company or an unincorporated association of persons;
- “person resident in Anguilla” means a person who ordinarily resides within Anguilla or carries on business from an office or other fixed place of business within Anguilla but does not include an international business company;
- “prescribed” means prescribed by regulations made by the Governor under section 132;
- “Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 8(3).
- “Registrar” means the Registrar of Companies;
- “relevant licence” means —
- (a) a licence issued under the Company Management Act; and
  - (b) a licence issued under the Trust Companies and Offshore Banking Act;
- “securities” means shares, indicia of equity ownership of a company of every kind, debt, obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;
- “surplus”, in relation to an international business 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;
- “treasury shares” means shares of an international business company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled.

(2) A reference in this Act to voting in relation to shares shall be construed as a reference to voting by shareholders holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of shareholders who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.

(3) Unless otherwise defined in the articles or by-laws of an international business company, “resolution of directors” means—

- (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of the company, by affirmative vote of a simple majority, or such larger majority as may be specified in the articles or by-laws, of the directors present at the meeting who voted and did not abstain; or
- (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the articles or by-laws, of all the directors or of all the members of the committee, as the case may be;

but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

(4) Unless otherwise defined in the articles or by-laws of an international business company, the expression “resolution of shareholders” means—

- (a) a resolution approved at a duly constituted meeting of the shareholders of the company by the affirmative vote of—
  - (i) a simple majority, or such larger majority as may be specified in the articles or by-laws, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain, or
  - (ii) a simple majority, or such larger majority as may be specified in the articles or by-laws, of the votes of each class or series of shares that were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the articles or by-laws, of the votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or
- (b) a resolution consented to in writing by—
  - (i) an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of shares entitled to vote thereon, or
  - (ii) an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of each class or series of shares entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of the remaining shares entitled to vote thereon.

(5) Subject to the articles or by-laws of an international business company, for the purposes of subsections (3) and (4)—

- (a) “writing” includes telex, telegram, facsimile, cable, electronic mail or other written electronic communication; and
- (b) notice is not required for a resolution consented to in writing.

## PART 2

### CONSTITUTION OF COMPANIES

#### **Incorporation**

**2.** (1) Subject to this Act, one or more persons may incorporate an international business company by signing and filing articles of incorporation with the Registrar.

(2) No individual who—

- (a) is less than 18 years of age;
- (b) is of unsound mind and has been so found by a tribunal in Anguilla or elsewhere; or
- (c) has the status of a bankrupt;

may be an incorporator of an international business company.

#### **Restrictions on international business company**

**3.** (1) An international business company shall not—

- (a) carry on business with persons resident in Anguilla;
- (b) carry on a banking or trust business within the meaning of the Trust Companies and Offshore Banking Act;
- (c) carry on business as an insurance or a reinsurance company, insurance agent, insurance broker, or insurance manager;
- (d) carry on company management business within the meaning of the Company Management Act; or
- (e) own or hold an interest, whether legal or beneficial, in real property situated in Anguilla, other than property referred to in paragraph (2)(e).

(2) For the purposes of paragraph (1)(a), an international business company shall not be treated as carrying on business with persons resident in Anguilla by reason only of the fact that—

- (a) it makes or maintains deposits with, or borrows money from, a bank that has a licence to carry on banking business granted under the Banking Act or a bank that has an offshore banking licence granted under the Trust Companies and Offshore Banking Act;

- (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within Anguilla;
  - (c) it prepares or maintains books and records within Anguilla;
  - (d) it holds, within Anguilla, meetings of its directors or shareholders;
  - (e) it holds property for use as an office from which to communicate with shareholders or where books and records of the company are prepared or maintained;
  - (f) it holds shares, debt obligations or other securities in another international business company or company incorporated under the Companies Act;
  - (g) shares, debt obligations or other securities in the company are owned by any person resident in Anguilla or by any international business company or company incorporated under the Companies Act; or
  - (h) it owns a vessel or vessels registered in Anguilla in accordance with the Merchant Shipping Act.
- (3) For the purposes of paragraph (1)(e)—
- (a) an international business company is deemed to own or hold an interest in real property situated in Anguilla if it owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate—
    - (i) that owns or holds an interest, legal or beneficial, in real property situated in Anguilla, or
    - (ii) that owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate that owns or holds an interest, legal or beneficial, in real property situated in Anguilla; and
  - (b) in determining whether an Anguilla company or other body corporate referred to in paragraph (a) owns or holds an interest in real property situated in Anguilla, the criteria specified under paragraph (a) shall be applied to it as if it was the international business company.
- (4) An international business company that contravenes subsection (1) commits an offence.

**Personal liability**

**4.** Subject to section 73, no shareholder, director, officer, agent or liquidator of an international business company is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in Anguilla, and except in so far as he may be liable for his own conduct or acts.

**Name of international business company**

5. (1) Subject to subsections (2) and (3), the word or words, or abbreviations thereof, specified in one of the following paragraphs shall form the last part of the name of every international business company—

- (a) “Limited” or the abbreviation “Ltd.”;
- (b) “Corporation” or the abbreviation “Corp.”;
- (c) “Incorporated” or the abbreviation “Inc.”;
- (d) “Sendirian Berhad” or the abbreviation “Sdn Bhd”;
- (e) “Société à Responsabilité Limitée” or the abbreviation “SARL”;
- (f) “Société Anonyme” or the abbreviation “S.A.”;
- (g) “Sociedad Anonima” or the abbreviation “S.A.”;
- (h) “Besloten Vennootschap” or the abbreviation “B.V.”;
- (i) “Gesellschaft mit beschränkter Haftung” or the abbreviation “GmbH”;
- (j) “Naamloze Vennootschap” or the abbreviation “NV”.

(2) Notwithstanding subsection (1), one or more words, or an abbreviation thereof, approved by the Registrar that, in his opinion, denote the existence of a body corporate with limited liability in a jurisdiction other than Anguilla may be used in place of the word or words or abbreviations set out in subsection (1).

(3) Where one or more words, or an abbreviation thereof, approved by the Registrar under subsection (2) are used in the name of a company, the word, words or abbreviation shall be placed in such position within the name of the company as the Registrar directs.

(4) The name of an international business company—

- (a) shall not be the same as, or similar to, the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and—
  - (i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired, or
  - (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;



- (b) shall not be identical to the name of a body corporate incorporated under the laws of Anguilla before 1st January, 1995;
  - (c) shall not suggest or imply the patronage of Her Majesty or any member of the Royal Family or connection with Her Majesty's Government or any department thereof in the United Kingdom or elsewhere;
  - (d) shall not suggest or imply a connection with a political party or a leader of a political party;
  - (e) shall not suggest or imply a connection with a university or a professional association recognized by the laws of Anguilla unless the university or professional association concerned consents in writing to the use of the proposed name; and
  - (f) shall not be a name that is prohibited by the regulations.
- (5) An international business company may amend its articles to change its name.
- (6) If an international business company is incorporated under a name that—
- (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act; or
  - (b) so nearly resembles the name as to be likely to confuse or mislead;

the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and, if it fails to do so within 60 days from the date of the notice, the Registrar shall amend the articles of the company to change its name to any name that the Registrar deems appropriate, and the Registrar must publish notice of the change in the *Gazette*.

(7) Subject to subsections (4) and (6), where an international business company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a certificate of incorporation indicating the change of name.

(8) A change of name does not affect any rights or obligations of an international business company, or render defective any legal proceedings by or against an international business company, and all legal proceedings that have been commenced against an international business company by its former name may be continued against it under its new name.

(9) Subject to subsection (4), the Registrar may, upon application made by any person in prescribed form, reserve for 120 days a name for future adoption by an international business company under this Act.

(10) The Registrar may exempt a body corporate continued as an international business company under this Act from the requirements of subsection (1).

(11) An international business company that, after the publication by the Registrar of a notice of change of name under subsection (6), uses the name that has been changed commits an offence.

**Use of names of dissolved companies**

6. Notwithstanding the provisions of section 5, the Registrar may permit an international business company to be incorporated or continued under, or change its name to, a name that is identical or similar to the name of a company that has been and remains struck off the Register under this Act, if—

- (a) the company has been struck off the Register for a continuous period of more than 3 years; and
- (b) no application for the company to be restored to the Register under section 111(1) has been filed and remains undetermined by the Registrar; and
- (c) no appeal against a decision of the Registrar under section 111(3) is pending.

**Articles of incorporation**

7. (1) Articles of incorporation shall be in prescribed form and set out, in respect of the proposed international business company—

- (a) its proposed name;
- (b) the address within Anguilla of its first registered office;
- (c) the name and address of its first registered agent;
- (d) the classes and any maximum number of shares that the company is authorised to issue, and—
  - (i) if there will be 2 or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, or
  - (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
- (e) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
- (f) the restrictions on the business that the company may carry on, including the restrictions set out in section 3(1); and
- (g) whether the company elects to be subject to sections 78 to 82.

(2) The articles may set out any provisions permitted by the Act or by law permitted to be set out in the by-laws of the international business company.

(3) Where the right to transfer any shares is restricted, a notification to that effect shall be given on each share certificate issued in respect of those shares.

**Certificate of incorporation**

**8.** (1) If he is satisfied that the requirements of this Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of articles of incorporation, issue a certificate of incorporation of the international business company, and the certificate is conclusive proof of the incorporation of the international business company named in the certificate.

(2) A certificate of incorporation of an international business company issued by the Registrar under this Act is *prima facie* evidence of compliance with all requirements of this Act in respect of incorporation.

(3) The Registrar shall keep a register to be known as the Register of International Business Companies that shall contain such information as he thinks fit.

**Capacity and powers**

**9.** (1) Subject to any limitations in its articles or by-laws, this Act or any other enactment or law for the time being in force in Anguilla, an international business company has the power, irrespective of corporate benefit, to carry on or undertake any business or activity, do any act, or enter into any transaction.

(2) An international business company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Anguilla to the extent that the laws of Anguilla and of that jurisdiction permit.

(3) It is not necessary for a by-law to be passed to confer any particular power on an international business company or its directors.

(4) This section does not authorise any international business company to carry on any business or activity in breach of—

- (a) any enactment prohibiting or restricting the carrying on of the business or activity; or
- (b) any provision requiring any permission or licence for the carrying on of the business or activity.

**Amendment of articles**

**10.** (1) Subject to any limitation in its articles or by-laws, an international business company may amend its articles by a resolution of shareholders or, where permitted by its articles or by-laws or by this Act, by a resolution of directors.

(2) An international business company that amends its articles must, within 14 days of the date of the resolution effecting the amendment, file articles of amendment with the Registrar in prescribed form.

(3) An amendment to the articles has effect from the time the amendment is registered by the Registrar.

(4) An international business company that contravenes subsection (2) commits an offence.

**By-laws**

**11.** (1) The shareholders or, unless the articles or by-laws otherwise provide, the directors may by resolution make, amend, or repeal any by-laws of the company.

(2) At any time before the organisational meeting of directors held pursuant to section 41, the incorporators may make by-laws by signing them.

**Validity of acts**

**12.** For the avoidance of doubt, it is declared that no act of an international business company, including any transfer of property to or by the company, is invalid by reason only that the act or transfer is contrary to its articles.

**Effect of articles and by-laws**

**13.** (1) The articles and by-laws of an international business company have no effect to the extent that they contravene, or are inconsistent with, this Act.

(2) Subject to this Act, the articles and by-laws of an international business company are binding as—

- (a) between the company and each shareholder; and
- (b) between shareholders.

## PART 3

## SHARE CAPITAL AND DIVIDENDS

**Issue of shares and consideration**

**14.** (1) A share shall not be issued in an international business company 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.

(2) Subject to any limitations in the articles or by-laws, shares in an international business company—

- (a) 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;
- (b) 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.

(3) A share issued by an international business 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.

(4) Subject to its articles or by-laws, the unissued shares and treasury shares of an international business company shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the directors may, by resolution, determine.

### **Nature of shares**

**15.** (1) A share in an international business company is a form of personal property.

(2) Unless otherwise specified in the articles or by-laws or upon the issue of a share, each share of an international business company has attached to it the following rights—

- (a) the right to one vote at any meeting of the shareholders of the company, other than a meeting of the shareholders of a class of which the holder of the share is not a member;
- (b) the right to an equal share in dividends declared and paid by the company under section 32;
- (c) the right to an equal share in any distribution of the surplus assets of the company.

### **Issue of shares and other securities**

**16.** (1) Subject to its articles or by-laws, an international business company may issue shares and other securities of any type including—

- (a) registered shares, bearer shares or both;  
*(Act 6 of 2006 s. 3)*
- (b) shares with special, conditional, limited or no voting rights;
- (c) common shares, preference shares, limited shares and redeemable shares;
- (d) shares that entitle the holder to participation in certain assets only;
- (e) shares with a par value;
- (f) shares with no par value;
- (g) options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company; and
- (h) securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then owned or to be owned by the company.

(2) A company may issue shares in more than one currency if a mechanism for calculating exchange rates into dollars is provided in the articles or by-laws.

### **Authorised capital**

**17.** (1) The authorised capital of an international business company may be stated in a currency approved by the Registrar and the par value of shares with a par value, if any, shall be expressed in the same currency.

(2) The Registrar may issue guidelines with respect to the calculation of fees payable pursuant to any regulations made under this Act for international business companies with an authorised capital stated in a currency other than United States dollars.

### **Fractional shares**

**18.** Subject to the articles or by-laws, an international business company may issue fractions of a share, and unless and to the extent otherwise provided in the articles or by-laws, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

### **Capital and surplus accounts**

**19.** (1) Upon the issue by an international business 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 any limitations in its articles or by-laws, upon the issue by an international business 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 its liquidation.

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

### **Dividend of shares**

**20.** (1) A share issued as a dividend by an international business 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 the 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 international business company upon its liquidation.

(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 proportionately smaller par value does not constitute a dividend of shares.

### **Increase or reduction of authorised capital**

**21.** (1) Subject to its articles or by-laws, an international business company may, by a resolution of directors, amend its articles or by-laws to increase or reduce its authorised capital, and in connection therewith, the company may—

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

(2) Where an international business company reduces its authorised capital under subsection (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 is deemed to be capital transferred from surplus to capital.

(3) An international business company must, within 14 days of the date of the resolution referred to under subsection (1), file a notice of any increase or decrease in its authorised capital in the prescribed form.

(4) An increase or decrease of the authorised capital of an international business company has effect from the time the resolution is registered by the Registrar in accordance with section 10.

(5) An international business company that contravenes subsection (3) commits an offence.

### **Division and combination of shares**

**22.** (1) An international business company may amend its articles or by-laws—

- (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 subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

### **Share certificates**

**23.** (1) An international business company must state in its articles or by-laws whether or not certificates in respect of its shares are required to be issued.

(2) If an international business company issues certificates in respect of its shares, the certificates—

- (a) must be signed by 2 directors or 2 officers of the company, or by 1 director and 1 officer; or

- (b) must be under the common seal of the company, with or without the signature of any director or officer of the company;

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

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

(4) An international business company that contravenes subsection (1) or (2) commits an offence.

### Share register

- 24.** (1) An international business company shall maintain a register of shareholders showing—
- (a) the name and latest known address of each person who holds a registered share in the company;
  - (b) the number of each class and series of registered shares held by each shareholder;
  - (c) the date on which the name of each person was entered on the register as a shareholder;
  - (d) the date on which any person ceased to be a shareholder;
  - (e) in the case of bearer shares, the total number of each class and series of bearer shares; and
  - (f) with respect to each certificate for bearer shares—
    - (i) the identifying number of the certificate,
    - (ii) the number of each class or series of bearer shares specified therein,
    - (iii) the date of issue of the certificate, and
    - (iv) the name and address of the custodian of the certificate;

but the company may delete from the register information relating to persons who are no longer shareholders or information relating to bearer shares that have been cancelled.

*(Act 6 of 2006 s. 4)*

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

(3) A copy of the share register, commencing from the date of the registration of the international business company, shall be kept at the registered office of the company referred to in section 36 or at the office of the registered agent referred to in section 37.



(4) The share register is *prima facie* evidence of any matters directed or authorised by this Act to be contained in it.

(5) An international business company that contravenes this section commits an offence.

### **Rectification of share register**

**25.** (1) If—

(a) information that is required to be entered in the share register under section 24 is omitted from it or inaccurately entered in it; or

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

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

(2) In any proceedings under subsection (1), the Court may determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the share register, whether the question arises between—

(a) 2 or more shareholders or alleged shareholders; or

(b) between shareholders or alleged shareholders and the company;

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

### **Transfer of registered shares**

**26.** (1) Subject to the articles or by-laws of an international business company, a registered share in the company may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

(2) In the absence of a written instrument of transfer referred to in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.

(3) An international business company shall not be required to treat a transferee of a registered share in the company as a shareholder until the transferee's name has been entered in the share register.

(4) Subject to its articles or by-laws, an international business company must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.

(5) A transfer of registered shares of a deceased, incompetent or bankrupt shareholder made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a shareholder by operation of law, has the

same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

(6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by the Court having regard to all the relevant evidence and the circumstances of the case.

(7) An international business company that contravenes subsection (4) commits an offence.

### **Custody, delivery and transfer of bearer shares**

**27.** (1) Subject to subsection (2) and to regulations made under that subsection, a bearer share is transferable by delivery of a certificate relating to the share.

(2) The Governor may, on the advice of the Commission, make regulations—

- (a) relating to the custody, delivery and transfer of bearer shares;
- (b) providing for bearer shares to be disabled where the regulations are not complied with; and
- (c) providing for such transitional provisions as the Governor may consider necessary or expedient to have effect consequent upon the coming into operation of the regulations.

(3) During the period in which a bearer share of an international business company is disabled pursuant to regulations made under subsection (2), that bearer share does not carry any of the entitlements which it would otherwise carry, including an entitlement to vote, an entitlement to a dividend and an entitlement to a share in the assets of the company on its winding up or on its dissolution, and, subject to subsection (4), any transfer or purported transfer of an interest in the bearer share is void and of no effect.

(4) Subsection (3) does not apply to the transfer or delivery of a bearer share of an international business company—

- (a) to a custodian in accordance with regulations made under subsection (2); or
- (b) to the company where the share is to be, or has been—
  - (i) converted to, or exchanged for, a registered share,
  - (ii) redeemed, purchased or otherwise acquired by the company, or
  - (iii) forfeited and cancelled.

*(Act 6 of 2006 s. 5)*

### **Seizure**

**28.** (1) Unless the by-laws provide otherwise, where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Anguilla—

- (a) by or in connection with a nationalisation, expropriation, confiscation, coercion, force, duress or similar action; or
- (b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge;

takes or seizes any shares or other interest in an international business company, the company itself or a person holding shares or any other interest in the company, including an interest as a creditor, may apply to the Court for an order that the company disregard the taking or seizure and continue to treat the person who would have held the shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

(2) Without affecting subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the Court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interests.

(3) The Court may, upon application made to it under subsection (1) or (2)—

- (a) grant such relief as it considers equitable and proper; and
- (b) order that any shares or other interests in the company vest in such trustees as the Court may appoint upon such trusts and for such purposes as the Court determines.

### **Acquisition of own shares**

**29.** (1) Subject to its articles or by-laws, an international business 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) No purchase, redemption or other acquisition permitted under subsection (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, unless a question of law is involved.

(3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired—

- (a) pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company;

- (b) by virtue of a transfer of capital under section 31(1)(b)(iii);
- (c) by virtue of the provisions of section 92; and
- (d) pursuant to an order of the Court.

(4) Subject to its by-laws or articles, shares that an international business 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 a manner that would be a contravention of the requirements of section 31(2), 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.

### **Treasury shares disabled**

**30.** Where shares in an international business company—

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

the shares of the international business company are not entitled to vote or to have dividends paid on them and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the international business company.

### **Increase or reduction of capital**

**31.** (1) Subject to its articles or by-laws and subject to subsections (2) and (3), the capital of an international business company may, by a resolution of directors, be—

- (a) increased by transferring an amount of the surplus of the company to capital; or
- (b) reduced by—
  - (i) returning to shareholders any amount received by the company upon the issue of any of its shares, the amount being surplus to the requirements of the company,
  - (ii) cancelling any capital that is lost or not represented by assets having a realisable value, or
  - (iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire.

(2) No reduction of capital shall be effected that reduces the capital of the international business 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 subsection (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 unless a question of law is involved.

### **Dividends**

**32.** (1) Subject to its articles or by-laws, an international business company may, by a resolution of its 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, unless a question of law is involved.

### **Consequences of unlawful distribution**

**33.** (1) For the purposes of this section, an international business company makes an unlawful distribution if it—

- (a) purchases, redeems or otherwise acquires its own shares under section 29 in circumstances where the directors have not made the determination of solvency required by section 29(2);

- (b) reduces its capital under section 31—
  - (i) contrary to section 31(2), or
  - (ii) in circumstances where the directors have not made the determination of solvency required by section 31(3); or
- (c) pays dividends under section 32—
  - (i) contrary to section 32(2), or
  - (ii) in circumstances where the directors have not made the determination of solvency required by section 32(3).

(2) An international business company that makes an unlawful distribution commits an offence.

(3) Where an international business company makes an unlawful distribution, the Court may, on the application of the company or its liquidator, make a recovery order against a shareholder under subsection (4) or a compensation order against a director under subsection (5).

(4) Where a benefit is received by a shareholder as a result of an unlawful distribution, an order for the recovery of the benefit may be made against the shareholder unless the shareholder—

- (a) received the benefit in good faith and without knowledge of the failure of the directors to make a determination of solvency; and
- (b) has altered his position in reliance upon the validity of the unlawful distribution so that, having regard to all the circumstances, it would be inequitable to make a recovery order for the full amount of the benefit or at all.

(5) Where an international business company makes an unlawful distribution, a compensation order may be made against any director who knowingly authorised, acquiesced in or permitted the unlawful distribution, but the total sum ordered to be paid by those directors against whom a compensation order is made shall not exceed such sum as is necessary to restore the company to the position that it would have been in had the unlawful distribution not been made after taking account of the value of any benefits recovered from shareholders pursuant to an order made under subsection (4).

### **Appreciation of assets**

**34.** Subject to its articles or by-laws, an international business company may, by a resolution of directors, include in the computation of surplus for any purpose under this Act 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.

### **Mortgages and charges of shares**

**35.** (1) A mortgage or charge of shares of an international business company must be in writing signed by, or with the authority of, the holder of the bearer share or the registered holder of the registered share to which the mortgage or charge relates.

(2) A mortgage or charge of a bearer share is not valid and enforceable unless the certificate for the share is deposited with a custodian.

*(Act 6 of 2006 s. 6)*

(3) A mortgage or charge of shares of an international business company need not be in any specific form but it must clearly indicate—

- (a) the intention to create a mortgage or charge; and
- (b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(4) A mortgage or charge of shares of an international business company may be governed by the law of a jurisdiction other than Anguilla but, if a law other than the law of Anguilla is specified as the governing law—

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

(5) If no law is specified to govern a mortgage or charge of shares of an international business company, the instrument creating the mortgage or charge shall be governed by the laws of Anguilla and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies—

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and
- (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may—
  - (i) vote the shares,
  - (ii) receive dividends and other payments in respect of the shares, and
  - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares, until such time as the mortgage or charge is discharged.

(6) Subsection (5) also applies to a mortgage or charge of shares of an international business company where the law of Anguilla is specified as the governing law.

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

- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b) secondly, in discharging the sums secured by the mortgage or charge; and

- (c) thirdly, in paying any balance due to the mortgagor or chargor.
- (8) The remedies referred to in subsection (5) are not exercisable until—
- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
  - (b) the default has not been rectified within 14 days from service of the notice specifying the default and requiring rectification thereof.
- (9) In the case of the mortgage or charge of registered shares, there may be entered in the share register of the company—
- (a) a statement that the shares are mortgaged or charged;
  - (b) the name of the mortgagee or chargee; and
  - (c) the date on which the statement and name are entered in the share register.

#### PART 4

#### REGISTERED OFFICE AND AGENT

##### **Registered office**

- 36.** (1) An international business company shall at all times have a registered office in Anguilla.
- (2) On the registration of an international business company, its registered office is as specified in the articles.
- (3) An international business company may change the location of its registered office by filing a notice in the prescribed form with the Registrar.
- (4) The change of registered office takes effect upon the notice being registered by the Registrar.
- (5) The registered office of an international business company must be provided by a person who holds a relevant licence.
- (6) If the person providing the registered office for an international business company ceases to hold a relevant licence, the company shall, within 14 days of becoming aware that the person concerned has ceased to hold a relevant licence, change the location of its registered office so that it is provided by a person who holds a relevant licence.
- (7) An international business company that contravenes subsection (6) commits an offence.
- (8) Subject to subsection (9), a person who, not being the holder of a relevant licence, provides the registered office of an international business company commits an offence.



(9) If a person providing the registered office of an international business company ceases to hold a relevant licence, he does not commit an offence under subsection (8) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its registered office in accordance with subsection (6).

### **Registered agents**

**37.** (1) An international business company shall at all times have a registered agent in Anguilla.

(2) On the registration of an international business company, its registered agent is as specified in the articles.

(3) An international business company may change its registered agent by filing a notice in the prescribed form with the Registrar.

(4) The change of registered agent takes effect upon the notice being registered by the Registrar.

(5) The registered agent of an international business company must be a person who holds a relevant licence.

(6) If the registered agent of an international business company ceases to hold a relevant licence, the international business company shall, within 14 days of becoming aware that the person concerned has ceased to hold a relevant licence, change its registered agent to a person who holds a relevant licence.

(7) An international business company that contravenes subsection (6) commits an offence.

(8) Subject to subsection (9), a person who, not being the holder of a relevant licence, acts as the registered agent of an international business company commits an offence.

(9) If a person who acts as the registered agent of an international business company ceases to hold a relevant licence, he does not commit an offence under subsection (8) if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a relevant licence and that the company must change its registered agent in accordance with subsection (6).

### **Registered agent ceasing to act for company**

**38.** (1) If the registered agent of an international business company desires to cease to act as its registered agent, he must give not less than 30 days written notice of his intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) must be sent—

(a) to a director or officer of the company at the address of the director or officer last known to the registered agent; or

(b) if the registered agent is not aware of the identity of any director or officer of the company, to the person from whom he last received instructions concerning the company.

(3) The registered agent must, within 7 days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.

(4) If, at the time of expiry of the notice given under subsection (1), the company has not filed a notice of change of registered agent under section 37(3), the Registrar shall publish a notice in the *Gazette* that, unless the company files notice of a change of registered agent within 30 days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register and dissolved.

(5) If a company fails to file a notice of change of registered agent within 30 days of publication of a notice in the *Gazette* under subsection (4), the Registrar must strike the company off the Register whereupon it is dissolved; the Registrar must publish a notice of the striking off and dissolution of a company under this section in the *Gazette*.

(6) The striking of a company off the Register is effective from the date of the notice published in the *Gazette* under subsection (5).

(7) A registered agent who contravenes subsection (3) commits an offence.

## PART 5

### DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

#### Management by directors

**39.** Subject to its articles or by-laws, the business and affairs of an international business company shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

#### Disqualified directors

**40.** (1) An individual who is disqualified under section 66 of the Companies Act from being a director of a company incorporated or continued under that Act, may not, during the period of his disqualification, be a director of an international business company.

(2) An individual who contravenes subsection (1) commits an offence.

#### Organisational meeting

**41.** (1) After the issue of a certificate of incorporation of an international business company, a meeting of the directors of the company shall be held at which the directors may—

- (a) make by-laws unless by-laws have been made by the incorporators pursuant to section 11;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;

- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post or any other similar means not less than 3 clear days notice of the meeting to each director and stating in the notice the time and place of the meeting.

#### **Appointment of directors, etc.**

**42.** (1) The first directors of an international business company shall be appointed by the incorporators, and thereafter the directors shall be appointed by resolution of the shareholders for such term as they may determine.

(2) Where the articles or by-laws permit, the directors may, by resolution, appoint directors for such term as they may determine.

(3) A person must not be appointed a director of an international business company unless he has consented to be a director.

(4) Each director holds office until his successor takes office or until his death, resignation or removal, whichever is the earliest.

(5) A director may—

- (a) be removed from office by a resolution of shareholders or by a resolution of directors; and
- (b) resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(6) A vacancy in the board of directors may be filled by a resolution of shareholders or of a majority of the remaining directors.

#### **Number of directors**

**43.** The number of directors shall be fixed by the articles or by-laws and the articles or by-laws may be amended to change the number of directors.

#### **Powers of directors**

**44.** The directors have all the powers of management of the international business company that are not reserved to the shareholders under this Act or by the articles or by-laws.

#### **Emoluments of directors**

**45.** Subject to the articles or by-laws, the directors may by a resolution fix the emoluments of directors in respect of services to be rendered in any capacity to the international business company.

**Committees of directors**

**46.** (1) The directors may by resolution designate one or more committees, each consisting of one or more directors.

(2) Subject to the articles or by-laws, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the international business company, as are set out in the resolution of directors establishing the committee, except that no committee has any power or authority to amend the articles or by-laws or with respect to the matters requiring a resolution of directors under section 42 or 52.

**Meetings of directors**

**47.** (1) Subject to the articles or by-laws, the directors of an international business company may meet at the times and in the manner and places within or outside Anguilla that the directors may determine to be necessary or desirable.

(2) A director is deemed to be present at a meeting of directors if—

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

**Notice of meetings of directors**

**48.** (1) Subject to a requirement in the articles or by-laws to give longer notice, a director shall be given not less than one day's notice of a meeting of directors.

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

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

**Quorum for meetings of directors**

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

(2) Where a company has only one director—

- (a) that director present in person or by his alternate shall be a quorum at meetings of the director; and
- (b) where the director takes any decision that has effect as a resolution of the directors, he shall, unless the decision is taken by way of a written resolution, provide the company with a written record of the resolution.

**Consent of director**

**50.** Subject to the articles or by-laws, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors.

**Alternates for directors**

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

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

**Officers and agents**

**52.** (1) The directors may by a resolution appoint any person, including a person who is a director, to be an officer or agent of the company.

(2) Subject to the articles or by-laws, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set out in the articles or by-laws or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority—

(a) to amend the articles or by-laws; or

(b) with respect to any matter that in accordance with this Act, requires a resolution of directors.

(3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

**Standard of care**

**53.** (1) Every director, officer, agent and liquidator of an international business company in performing his functions shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) No provision in the articles or by-laws of an international business company or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the articles or by-laws or from any personal liability arising from his management of the business and affairs of the company.

**Reliance on records and reports**

**54.** Every director, officer, agent and liquidator of an international business company in performing his functions is entitled to rely upon the share register kept under section 24, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 65 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

**Conflict of interest**

**55.** (1) Subject to the articles or by-laws, if the requirements of subsection (2) or (3) are satisfied, no agreement or transaction between—

- (a) an international business company; and
- (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person;

is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.

(2) An agreement or transaction referred to in subsection (1) is valid if—

- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and
- (b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved—
  - (i) without counting the vote or consent of any interested director or liquidator, or
  - (ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.

(3) An agreement or transaction referred to in subsection (1) is valid if—

- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the shareholders entitled to vote at a meeting of shareholders; and
- (b) the agreement or transaction is approved or ratified by a resolution of shareholders.

(4) Subject to the articles or by-laws, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or shareholders may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 49 or otherwise.

**Indemnification**

**56.** (1) Subject to subsection (2) and to the articles or by-laws, an international business company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings against any person who—

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

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.

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

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

### **Insurance**

**57.** An international business company may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer or a liquidator, of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 56(1).

## **PART 6**

### **PROTECTION OF SHAREHOLDERS AND CREDITORS**

#### **Meetings of shareholders**

**58.** (1) Subject to the articles or by-laws, the directors of an international business company may convene meetings of the shareholders of the company at the times and in the manner and places within or outside Anguilla that the directors consider necessary or desirable.

(2) Subject to the articles or by-laws, upon the written request of shareholders holding more than 50% of the votes of the outstanding voting shares in the international business company, the directors shall convene a meeting of shareholders.

(3) Subject to the articles or by-laws, a shareholder is deemed to be present at a meeting of shareholders if—

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

(4) A shareholder may be represented at a meeting of shareholders by a proxy who may speak and vote on behalf of the shareholder.

(5) The following apply in respect of joint ownership of shares—

- (a) if 2 or more persons hold shares jointly, each of them may be present in person or by proxy at a meeting of shareholders and may speak as a shareholder;
- (b) if only 1 of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if 2 or more are present in person or by proxy, they must vote as one.

#### **Notice of meetings of shareholders**

**59.** (1) The directors shall give not less than 7 days notice of meetings of shareholders to those persons whose names on the date the notice is given appear as shareholders in the share register referred to in section 24 and are entitled to attend the meeting.

(2) Notwithstanding subsection (1), a meeting of shareholders held in contravention of the requirement to give notice is valid if shareholders holding a majority of—

- (a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where shareholders are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes;

have waived notice of the meeting, and for this purpose the presence of a shareholder at the meeting is deemed to constitute a waiver on his part.

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

#### **Quorum for meetings of shareholders**

**60.** (1) The quorum for a meeting of shareholders for purposes of a resolution of shareholders is that fixed by the articles or by-laws but, where no quorum is so fixed, a meeting of shareholders is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy one-half of the votes of the shares of each class or series of shares and the same proportion of the votes of the remaining shares entitled to vote on the resolution.



(2) Where a company has only one shareholder that shareholder present in person or by proxy is a quorum at meetings of the shareholder.

### **Voting by shareholders**

**61.** (1) Except as otherwise provided in the articles or by-laws, all shares vote as one class.

(2) The directors of an international business company may fix the date that notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

### **Consent of shareholders**

**62.** Subject to the articles or by-laws, an action that may be taken by shareholders at a meeting of shareholders may also be taken by a resolution of shareholders.

### **Service of notice on shareholders**

**63.** (1) Any notice, information or written statement required under this Act to be given by an international business company to shareholders must be served—

(a) in the case of shareholders holding registered shares—

(i) in the manner provided in the articles or by-laws, as the case may be, or

(ii) in the absence of a provision in the articles or by-laws, by personal service or by mail addressed to each shareholder at the address shown in the share register; and

(b) in the case of shareholders holding bearer shares, in the absence of a provision in the articles or by-laws by publishing the notice, information or written statement in a newspaper circulated in Anguilla and a newspaper in the place where the company has its principal office if different.

*(Act 6 of 2006 s. 7)*

(2) The directors must give sufficient notice of meetings of shareholders to shareholders holding bearer shares to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

*(Act 6 of 2006 s. 7)*

(3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

### **Service of process, etc. on company**

**64.** (1) Any summons, notice, order, document, process, information or written statement to be served on an international business company may be served—

(a) by leaving it, or by sending it by registered mail addressed to the company, at its registered office; or

(b) by leaving it with, or by sending it by registered mail to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on an international business company may be proved by showing that the summons, notice, order, document, process, information or written statement—

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

### **Books, records and common seal**

**65.** (1) An international business company must keep accounting records that—

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

(2) An international business company shall keep—

- (a) minutes of all meetings of—
  - (i) directors,
  - (ii) shareholders,
  - (iii) committees of directors,
  - (iv) committees of officers, and
  - (v) committees of shareholders;
- (b) copies of all resolutions consented to by—
  - (i) directors,
  - (ii) shareholders,
  - (iii) committees of directors,
  - (iv) committees of officers, and
  - (v) committees of shareholders; and
- (c) the articles and the by-laws and all amendments to them.

(3) The books and records required to be kept under subsection (1) or under paragraphs (2)(a) and (b) must be kept at the registered office of the international business company or at such other place as the directors may by resolution determine.

(4) The articles and the by-laws of an international business company, and all amendments thereto, must be kept at the registered office of the company.

(5) An international business company shall have a common seal and an imprint of it shall be kept at the registered office of the company.

(6) An international business company that contravenes subsection (1), (2), (3) or (4) commits an offence.

### **Inspection of books and records**

**66.** (1) A shareholder of an international business company may, in person or by attorney and in furtherance of a proper purpose, request in writing, specifying the purpose, to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) A shareholder of an international business company is, upon request, entitled—

- (a) to one copy of the articles and by-laws of the company and any amendments thereto, without charge; and
- (b) to additional copies of the articles and by-laws of the company and any amendments thereto, upon the payment of such fee as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

(3) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the shareholder's interest as a shareholder.

(4) If a request under subsection (1) is submitted by an attorney for a shareholder, the request must be accompanied by a power of attorney authorising the attorney to act for the shareholder.

(5) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other shareholder of the company to comply with a request under subsection (1), the company may refuse the request.

(6) Upon refusal by the company of a request under subsection (1) or (2), the shareholder may, before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the Court for an order to allow the inspection requested under subsection (1) or to require the company to comply with subsection (2), as appropriate, and the Court may make such order as it thinks fit.

### **Contracts generally**

**67.** (1) Contracts may be entered into on behalf of an international business company as follows—

- (a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;
- (b) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and

- (c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.

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

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

### **Pre-incorporation contracts**

**68.** (1) A person who enters into a written contract in the name of or on behalf of an international business company before the company comes into existence is personally bound by the contract and is entitled to the benefits of the contract, except where—

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

(2) Within a reasonable time after an international business company comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.

(3) When an international business company adopts a contract under subsection (2)—

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

### **Contracts for payment or transfer**

**69.** (1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever located, is entered into by an international business company and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property—

- (a) upon the death of the person making the designation;
- (b) upon the death of another person; or
- (c) upon the happening of any other event specified in the contract, agreement, deed or other instrument;

then, the payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

(2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that—

- (a) the designation is revocable or subject to change; or
- (b) the claim or property—
  - (i) is not yet payable or transferable, as the case may be, at the time the designation is made, or
  - (ii) is subject to withdrawal, collection or assignment by the person making the designation.

#### **Notes and bills of exchange**

**70.** A promissory note or bill of exchange is deemed to have been made, accepted or endorsed by an international business company if it is made, accepted or endorsed in the name of the company—

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

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

#### **Power of attorney**

**71.** (1) An international business company may, by an instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

#### **Authentication or attestation**

**72.** (1) A document requiring authentication or attestation by an international business company may be signed by a director, a secretary or by an authorised officer or agent of the company, and need not be under its common seal.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company, the company is bound by the document.

**Company without shareholders**

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

## PART 7

## REGISTRATION OF CHARGES

**Interpretation**

**74.** (1) In this Part—

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

“commencement date” means the 16th October, 2000;

“liability” includes contingent and prospective liabilities;

“property” includes future property;

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

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

**Creation of charges by an international business company**

**75.** (1) Subject to its articles, an international business company may, by an instrument in writing, create a charge over its property.

(2) A charge created by an international business company shall be governed—

(a) by such law as may be agreed between the company and the chargee; or

(b) if the company and the chargee do not agree on a governing law, by the law of Anguilla.

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

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

(b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

**International business company to keep register of charges**

**76.** (1) An international business company must keep a register of all relevant charges created by the company showing—

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

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

(3) A copy of the register of charges must be kept at the registered office of the company or at the office of its registered agent.

(4) An international business company that contravenes this section commits an offence.

**Application of registration provisions**

**77.** (1) Sections 78 to 83 apply to a company that makes an election under subsection (2).

(2) A company may elect to be subject to the provisions of sections 78 to 82—

- (a) by making an election in its articles of incorporation; or
- (b) at any time after its incorporation by filing with the Registrar a notice of election in the prescribed form.

(3) A notice of election filed under paragraph (2)(b) takes effect upon its registration by the Registrar.

(4) A company may revoke an election made under this section if—

- (a) no charge has been registered in respect of the company under section 78; or

(b) all charges registered against the company have ceased to affect the property of the company and, in respect of each charge registered, the appropriate notice has been registered under section 80.

(5) A notice of revocation must be filed with the Registrar in the prescribed form.

(6) Where a company revokes an election made under this section—

(a) it ceases to be subject to sections 78 to 82 from the registration of the notice of revocation by the Registrar;

but—

(b) sections 81 and 83 apply in respect of all charges created by the company in the period during which an election made under subsection (2) was in force.

### **Registration of charges**

**78.** (1) Where an international business company to which this section applies creates a relevant charge, an application to register the charge may be made by—

(a) the company, or a person authorised to act on its behalf; or

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

(2) An application under subsection (1) is made by filing with the Registrar—

(a) an application containing the information and in the form prescribed;

(b) a certified copy of the charge; and

(c) if the charge is in a language other than English, a certified translation of the charge.

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

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

(a) must forthwith—

(i) register the charge in the register of registered charges kept by him for that company, and

(ii) issue a certificate of registration of the charge and send a copy to the company and to the chargee; and

(b) must retain a copy of the charge.

(5) The Registrar must state in the register of registered charges and on the certificate of registration the date and time on which a charge was registered.



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

### **Variation of registered charge**

**79.** (1) Where there is a variation in the terms of a charge registered under section 78, application for the variation to be registered may be made by—

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

(2) An application under subsection (1) is made by filing with the Registrar—

- (a) an application containing the information and in the form prescribed;
- (b) a certified copy of the instrument varying the charge; and
- (c) if the instrument varying the charge is in a language other than English, a certified translation of the instrument.

(3) Upon receipt of an application complying with subsection (2), the Registrar—

- (a) must forthwith—
  - (i) register the variation of the charge, and
  - (ii) issue a certificate of variation and send a copy of the certificate to the company and to the chargee; and
- (b) must retain a copy of the instrument varying the charge.

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

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

### **Charge ceasing to affect company's property**

**80.** (1) Where a charge registered under this Part ceases to affect the property of an international business company, the company must file with the Registrar a notice specifying the property that has ceased to be affected by the charge and containing the information and in the form prescribed.

(2) A notice filed under subsection (1) must be signed by or on behalf of the company and the chargee.

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

- (a) must forthwith—

- (i) register the notice, and
  - (ii) issue a certificate and send a copy of the certificate to the company and to the chargee; and
- (b) must retain a copy of the notice.

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

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

### **Priority of charges**

**81.** (1) A registered charge on property of a company has priority over—

- (a) a subsequent registered charge on the property; and
- (b) an unregistered charge on the property created on or after the commencement date.

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

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

### **Exceptions to section 81**

**82.** Notwithstanding section 81—

- (a) the order of priorities of charges is subject to—
  - (i) any consent (express or implied) of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over, or
  - (ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the company to create any future charge ranking in priority to or equally with the charge.

### **Inspection of register of charges kept by Registrar**

**83.** Notwithstanding section 12 of the Companies Registry Act, a person may only inspect the certified copy of a registered charge and a certified translation of that charge filed in respect of a company under section 78(2) with the written authority of that company or of its registered agent.

## PART 8

MERGER, CONSOLIDATION, SALE OF ASSETS,  
FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS**Interpretation**

**84.** In this Part—

“consolidated company” means the new company that results from the consolidation of 2 or more constituent companies;

“consolidation” means the uniting of 2 or more constituent companies into a new company;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of 2 or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least 90% of the outstanding shares of each class and series of shares in another company;

“subsidiary company” means a company at least 90% of whose outstanding shares of each class and series of shares are owned by another company;

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

**Merger and consolidation**

**85.** (1) An international business company may merge or consolidate with one or more Anguilla companies in accordance with subsections (2) to (4), if the surviving company or the consolidated company is an international business company and will be in compliance with section 3.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case may be—

- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
- (b) in respect of each constituent company—
  - (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
  - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obli-

gations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

- (d) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company to be brought about by the merger; and
- (e) in respect of a consolidation, everything required to be included in the articles or by-laws for an international business company, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

(4) The following apply in respect of a merger or consolidation under this section—

- (a) the plan of merger or consolidation must be authorised by a resolution of shareholders and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class or series to vote on the proposed amendment as a class or series;
- (b) if a meeting of shareholders is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, must be given to each shareholder, whether or not entitled to vote on the merger or consolidation;
- (c) if it is proposed to obtain the written consent of shareholders, a copy of the plan of merger or consolidation must be given to each shareholder, whether or not entitled to consent to the plan of merger or consolidation;
- (d) after approval of the plan of merger or consolidation by the directors and shareholders of each constituent company, articles of merger or consolidation must be executed by each company and must contain—
  - (i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the articles or by-laws for an international business company,
  - (ii) the date on which the articles or by-laws of each constituent company were registered by the Registrar, and
  - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
- (e) the articles of merger or consolidation in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Part have been complied with, must retain and register them in the Register;

- (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered; and
- (g) a certification of merger or consolidation issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

### **Merger with subsidiary**

**86.** (1) A parent international business company may merge with a subsidiary Anguilla company, without the authorization of the shareholders of any company, in accordance with subsections (2) to (6), if the surviving company is an international business company and will be in compliance with section 3.

(2) The directors of the parent international business company must approve a written plan of merger containing—

- (a) the name of each constituent international business company and the name of the surviving company;
- (b) in respect of each constituent company—
  - (i) the designation and number of outstanding shares of each class and series of shares, and
  - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
- (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof must be given to every shareholder of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that shareholder.

(5) Articles of merger must be executed by the parent company and must contain—

- (a) the plan of merger;
- (b) the date on which the articles of each constituent company were registered by the Registrar; and

- (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the shareholders of each subsidiary company.

(6) The articles of merger in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Part have been complied with, must retain and register them in the Register.

(7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.

(8) A certificate of merger issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger.

### **Effect of merger or consolidation**

**87.** (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on the date subsequent thereto, not exceeding 30 days, that is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective—

- (a) the surviving company or the consolidated company in so far as is consistent with its articles and by-laws, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
- (b) in the case of a merger, the articles and by-laws of the surviving company are deemed to be amended to the extent, if any, that changes in its articles and by-laws are contained in the articles of merger;
- (c) in the case of a consolidation, the statements contained in the articles of consolidation, that are required or authorised to be contained in the articles and by-laws of an international business company, are the articles and by-laws of the consolidated company;
- (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
- (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs—

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any shareholder, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

- (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—
  - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the shareholder, director, officer or agent thereof, as the case may be, or
  - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register—
  - (a) a constituent company that is not the surviving company in a merger; or
  - (b) a constituent company that participates in a consolidation.

### **Merger or consolidation with foreign company**

**88.** (1) One or more international business companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Anguilla in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Anguilla are incorporated.

- (2) The following apply in respect of a merger or consolidation under this section—
  - (a) an international business company shall comply with this Act with respect to the merger or consolidation, as the case may be, of such companies, and companies incorporated under the laws of a jurisdiction outside Anguilla shall comply with the laws of that jurisdiction; and
  - (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Anguilla, it must file with the Registrar—
    - (i) an agreement that a service of process may be effected on it in Anguilla in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent international business company or in respect of proceedings for the enforcement of the rights of a dissenting shareholder of a constituent international business company against the surviving company or the consolidated company,
    - (ii) as irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i),
    - (iii) an agreement that it will promptly pay to the dissenting shareholders of a constituent international business company the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting shareholders, and
    - (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated, or, if no certificate of merger is

issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 85 if the surviving company or the consolidated company is incorporated under this Act, but, if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Anguilla, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 85 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation, but, if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Anguilla, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

### **Disposition of assets**

**89.** Any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance, of more than 50% of the assets of an international business company, if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

- (a) the proposed sale, transfer, lease, exchange or other disposition must be approved by resolution of the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the shareholders for it to be authorised by a resolution of shareholders;
- (c) if a meeting of shareholders is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each shareholder, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of shareholders, an outline of the proposal must be given to each shareholder, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

### **Redemption of minority shares**

**90.** (1) Subject to the articles or by-laws—

- (a) shareholders holding 90% of the votes of the outstanding shares entitled to vote; and
- (b) shareholders holding 90% of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series;

on a merger or consolidation under section 85 may give a written instruction to an international business company directing the company to redeem the shares held by the remaining shareholders.



(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction whether or not the shares are by their terms redeemable.

(3) The company must give written notice to each shareholder whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

### **Proposed compromise**

**91.** (1) Where a compromise or arrangement is proposed between an international business company and its creditors of any class, or between the company and its shareholders of any class, the Court may, on the application of the company or of any creditor or shareholder of the company or, in the case of a winding up, of the liquidator, order a meeting of the creditors or class of creditors or of the shareholders of the company or class of shareholders, as the case may be.

(2) If a majority representing 75% in value of the creditors or class of creditors, or shareholders or class thereof as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement and the Court by order approves the compromise or arrangement, it shall be binding on all creditors or class of creditors or on the shareholders or class thereof, as the case may be, and on the company or, in the event of a winding up, on the liquidator.

(3) An order made under subsection (2) has no effect until a copy has been filed with the Registrar, and a copy of the order shall be annexed to copies of the articles of the company issued after the making of the order.

(4) In this section “arrangement” includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both.

### **Rights of dissenters**

**92.** (1) A shareholder of an international business company is entitled to payment of the fair value of his shares upon dissenting from—

- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the shareholder continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than 50% of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—
  - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter, or
  - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition; or
- (d) a redemption of his shares by the company pursuant to section 90.

(2) A shareholder who desires to exercise his entitlement under subsection (1) must give to the company written objection to the action—

- (a) before the meeting of shareholders at which the action is submitted to a vote; or
- (b) at the meeting but before the vote;

but an objection is not required from a shareholder to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of shareholders without a meeting.

(3) An objection under subsection (2) must include a statement that the shareholder proposes to demand payment for his shares if the action is taken.

(4) Within 20 days immediately following the date on which the vote of shareholders authorising the action is taken, or the date on which written consent of shareholders without a meeting is obtained, the company must give written notice of the authorisation or consent to each shareholder who gave written objection or from whom written objection was not required, except those shareholders who voted for, or consented in writing to, the proposed action.

(5) A shareholder to whom the company was required to give notice who elects to dissent must, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating—

- (a) his name and address;
- (b) the number and classes or series of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares;

and a shareholder who elects to dissent from a merger under section 86 must give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 86.

(6) A shareholder who dissents must do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the shareholder to whom the notice relates ceases to have any of the rights of a shareholder except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which shareholders may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, must make a written offer to each dissenting shareholder to purchase his shares at a specified price that the company determines to be their fair value, and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting shareholder agree upon the price to be paid for his shares, the company shall pay to the shareholder the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting shareholder fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the shareholder, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply—

- (a) the company and the dissenting shareholder shall each designate an appraiser;
- (b) the 2 designated appraisers together shall designate a third appraiser;
- (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting shareholder as of the close of business on the day prior to the date on which the vote of shareholders authorising the action was taken or the date on which written consent of shareholders without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting shareholder for all purposes; and
- (d) the company shall pay to the shareholder the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but, if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a shareholder of his entitlement under this section excludes the enforcement by the shareholder of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the shareholder to institute proceedings to obtain relief on the ground that the action is illegal.

## PART 9

### CONTINUATION

#### **Continuation**

**93.** (1) An Anguilla company, other than an international business company, or a company incorporated under the laws of a jurisdiction outside Anguilla may, if it complies with section 3, continue as an international business company as follows—

- (a) the articles of continuation, written in the English language or, if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved—
  - (i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or
  - (ii) in such other manner as may be established by the company for exercising the powers of the company;
- (b) the articles of continuation must be in prescribed form and contain—

- (i) the name of the company and the name under which it is being continued,
  - (ii) the jurisdiction under which it is incorporated,
  - (iii) the date on which it was incorporated,
  - (iv) the information required to be included in the articles of incorporation under section 7, and
  - (v) the amendments to its articles and by-laws or their equivalent, that are to be effective upon the registration of the articles of continuation;
- (c) the articles of continuation, accompanied by a copy of the articles and by-laws of the company, or their equivalent, written in the English language or, if written in a language other than the English language, accompanied by a certified translation into the English language, and in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, must be filed with the Registrar who, if he is satisfied that the relevant requirements of this section have been complied with, must retain and register them in the Register; and
- (d) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(2) A company incorporated under the laws of a jurisdiction outside Anguilla may continue as an international business company even if the laws of the jurisdiction in which it is incorporated do not expressly permit its continuation or expressly prohibit it.

### **Provisional registration**

**94.** (1) A company incorporated under the laws of a jurisdiction outside Anguilla that is permitted under section 93 to continue as an international business company may, after complying with section 93(1)(a) and (b), file the following documents with the Registrar—

- (a) articles of continuation, accompanied by a copy of its articles and by-laws, or their equivalent, written in the English language or, if written in a language other than the English language, accompanied by a certified translation into the English language; and
- (b) a written authorisation designating one or more persons who may give notice to the Registrar, by telex, telegram, telefax, cable or by registered mail, that the articles of continuation should become effective.

(2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar shall, if he is satisfied that the relevant requirements of this Part have been complied with—

- (a) register the documents referred to in subsection (1) in the Register; and

- (b) issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) filed, or purported to be filed, by a person named in the written authorisation.

(5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorisation referred to in subsection (1) by delivering to the Registrar a written notice of rescission.

(6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorisation within one year immediately following the date on which the documents referred to in subsection (1) were filed with the Registrar, the articles of continuation are rescinded.

(7) A company entitled to file with the Registrar the documents referred to in subsection (1) may authorise the Registrar to accept as refiled the documents referred to in that subsection, before or after the documents previously filed referred to in subsection (1) have been rescinded.

#### **Certificate of continuation**

**95.** A certificate of continuation issued by the Registrar under section 93 or under section 94 is *prima facie* evidence of compliance with all requirements of this Act in respect of continuation.

#### **Effect of continuation**

**96.** (1) From the time of the issue by the Registrar of a certificate of continuation—

- (a) the company to which the certificate relates—
  - (i) is continued as an international business company under the name designated in the articles of continuation,
  - (ii) is capable of exercising all powers of an international business company, and
  - (iii) is no longer to be treated as a company incorporated or formed under the law that applied to it immediately prior to its continuation;
- (b) the articles and by-laws of the company, or their equivalent, as amended by the articles of continuation, are the articles and by-laws of the company;
- (c) property of every description, including choses in action and the business of the company, continue to be vested in the company; and
- (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.

(2) Where a company is continued under this Act—

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any shareholder, director, officer or agent thereof, is released or impaired by its continuation as an international business company under this Act; and

- (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by its continuation as an international business company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the shareholder, director, officer or agent thereof, as the case may be.

(3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation in respect of the company are deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid, shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the shareholder holding the share remains liable for the amount unpaid on the share.

(4) If, at the time of the issue by the Registrar of a certificate of continuation in respect of the company, any provisions of the articles and by-laws of the company do not in any respect accord with this Act—

- (a) the provisions of the articles and by-laws continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
- (b) any provisions of the articles and by-laws of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of the issue of the certificate of continuation, whichever is the sooner; and
- (c) the company shall make such amendments to its articles and by-laws as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

### **Continuation under foreign law**

**97.** (1) Subject to its articles or by-laws, an international business company may, by a resolution of directors or of shareholders, continue as a company incorporated under the laws of a jurisdiction outside Anguilla in the manner provided under those laws.

(2) An international business company proposing to leave Anguilla must file a certificate of departure containing the prescribed information in the prescribed form with the Registrar.

(3) A company that—

- (a) has filed a certificate of departure under subsection (2); and
- (b) has been continued under the law of a foreign jurisdiction;

may apply to the Registrar for a certificate of discontinuance.

(4) An application under subsection (3) must be accompanied by evidence acceptable to the Registrar that the company has been continued under the laws of a foreign jurisdiction.

(5) If he is satisfied that—

- (a) all fees payable under this Act have been paid;
- (b) all returns and notices required to be filed under this Act have been filed; and
- (c) the requirements of this section have been complied with;

the Registrar must issue a certificate of discontinuance in the prescribed form to the company and strike it off the Register.

(6) The Registrar must publish a notice of the discontinuance and striking off in the *Gazette*.

(7) Subject to subsection (8), from the date of the certificate of discontinuance, the company ceases to be an international business company domiciled in Anguilla.

(8) An international business company that continues as a company incorporated under the laws of a jurisdiction outside Anguilla does not cease to be an international business company unless the laws of the jurisdiction outside Anguilla permit the continuation and the company has complied with those laws.

(9) Where an international business company is continued under the laws of a jurisdiction outside Anguilla—

- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Anguilla;
- (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any shareholder, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Anguilla; and
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Anguilla, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the shareholder, director, officer or agent thereof, as the case may be.

#### **International business company may continue under the Companies Act**

**98.** (1) An international business company may continue as a company incorporated under the Companies Act in accordance with the provisions of that Act.

(2) Upon the continuation of a company under the Companies Act, the Registrar shall strike the name of the company off the Register and, with effect from the date of the company's continuation, it shall cease to be a company registered under this Act.

## PART 10

## WINDING UP, DISSOLUTION AND STRIKING OFF

**Compulsory winding up and dissolution**

**99.** An international business company shall begin to wind up and dissolve by a resolution of directors upon—

- (a) the expiration of the time that is prescribed by its articles or by-laws for its existence; or
- (b) the happening of an event that may have been specified in the articles as an event that shall terminate the existence of the company.

**Voluntary winding up and dissolution**

**100.** (1) An international business company that has never issued shares may voluntarily begin to wind up and dissolve by a resolution of directors.

(2) Subject to its articles or by-laws, an international business company that has previously issued shares may voluntarily begin to wind up and dissolve by a resolution of shareholders.

**Powers of directors in winding up and dissolution**

**101.** Upon the commencement of a winding up and dissolution under section 99 or 100, the directors' powers are limited—

- (a) to authorising a liquidator, by a resolution, to carry on the business of the company if the liquidator determines that to do so is necessary or would be in the best interests of the creditors or shareholders of the company; and
- (b) to rescinding the articles of dissolution as permitted under section 105.

**Appointment and duties of liquidator**

**102.** (1) If from any cause whatever there is no liquidator acting in the case of a winding up, the Court may, on the application of a shareholder, creditor or other interested party appoint a liquidator or liquidators, and the Court may on due cause being shown remove any liquidator and appoint another liquidator to act in the matter of a winding up.

(2) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding up and dissolution, proceed—

- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;



- (d) to distribute any surplus assets of the company to the shareholders in accordance with the articles and by-laws;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) to send a copy of the statement of account to all shareholders if so required by the plan of dissolution required by section 104.

(3) A transfer of all or substantially all of the assets of an international business company for the benefit of the creditors and shareholders of the company is sufficient to satisfy the requirements of paragraphs (2)(c) and (d).

### **Powers of liquidator**

**103.** (1) In order to perform the duties imposed on him under section 102, a liquidator has all powers of the company that are not reserved to the shareholders under this Act or in the articles or by-laws, including, but not limited to, the power—

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain solicitors, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors permitted under section 101, as the liquidator may determine to be necessary or to be in the best interests of the creditors or shareholders of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding paragraph (1)(h), a liquidator shall not, without the permission of the Court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.

### **Procedure on winding up and dissolution**

**104.** (1) The directors of an international business company required under section 99 or proposing under section 100 to wind up and dissolve the company must approve a plan of dissolution containing—

- (a) a statement of the reasons for the winding up and dissolving;
- (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
- (c) a statement that the winding up will commence on the date when articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
- (d) a statement of the estimated time required to wind up and dissolve the company;
- (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or shareholders of the company;
- (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
- (g) a statement as to whether the liquidator is required to send to all shareholders a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding up and dissolution is being effected in a case where section 100(2) is applicable—

- (a) the plan of dissolution must be authorised by a resolution of shareholders, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the articles or by-laws so provide;
- (b) if a meeting of shareholders is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each shareholder, whether or not entitled to vote on the plan of dissolution; and
- (c) if it is proposed to obtain the written consent of shareholders, a copy of the plan of dissolution must be given to each shareholder, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors and, if required, by the shareholders in accordance with subsection (2), articles of dissolution must be executed by the company and must contain—

- (a) the plan of dissolution; and
- (b) the manner in which the plan of dissolution was authorised.

(4) Articles of dissolution in prescribed form must be filed with the Registrar who, if he is satisfied that the relevant requirements of this Act have been complied with, must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are registered by the Registrar, the company must cause to be published, in the *Gazette*, in a publication of general circulation in Anguilla and in a publication of general circulation in the country or place where the company has its principal office, a notice stating—

- (a) that the company is in dissolution;
- (b) the date of commencement of the dissolution; and
- (c) the names and addresses of the liquidators.

(5) A winding up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding up and dissolution, file with the Registrar a statement that the winding up and dissolution has been completed and, if he is satisfied that the requirements of this Act in respect of winding up and dissolution have been complied with, upon receiving the notice, the Registrar shall—

- (a) strike the company off the Register; and
- (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

(7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved—

- (a) the certificate is *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the *Gazette*, in a publication of general circulation in Anguilla and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck off the Register.

(9) An international business company that contravenes subsection (4) commits an offence.

**Rescission of winding up and dissolution**

**105.** (1) In the case of a winding up and dissolution permitted under section 100, an international business company may, prior to filing with the Registrar a notice specified in section 104(6), rescind the articles of dissolution by—

- (a) a resolution of directors in the case of a winding up and dissolution under section 100(1); or
- (b) a resolution of shareholders in the case of a winding up and dissolution under section 100(2).

(2) A copy of a resolution referred to in subsection (1) must be filed with the Registrar who must retain and register it in the Register.

(3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been filed with the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the *Gazette*, in a publication of general circulation in Anguilla and in a publication of general circulation in the country or place where the company has its principal office.

(4) An international business company that contravenes subsection (3) commits an offence.

**International business company unable to pay its claims, etc.**

**106.** (1) Where—

- (a) the directors or, as the case may be, shareholders of an international business company that is required under section 99 or permitted under section 100 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
- (b) the liquidator after his appointment has reason so to believe;

then, the directors, the shareholders or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

(2) Where a notice has been given to the Registrar under subsection (1), all winding up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding up and dissolution and those provisions shall apply with appropriate modifications as the circumstances require to the winding up and dissolution of the company.

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

**Liquidation and dissolution by the Court**

**107.** (1) An order for the liquidation and dissolution of an international business company may be made by the Court if—

- (a) the company carries on business in breach of section 3 of this Act;
- (b) the company carries on business without a shareholder;
- (c) the company has seriously or persistently failed to comply with this Act;
- (d) the company is unable to pay its debts; or
- (e) the Court considers that it would be just and equitable for the company to be liquidated and dissolved.

(2) An application to the Court for an order under subsection (1) may be made by the Registrar or, if the application is made under paragraph (1)(c) or (d), by any interested person.

(3) Where the Court makes an order under this section, the provisions of the Companies Act shall apply as if the international business company was a company being liquidated and dissolved by the Court under section 214(3) of that Act.

### **Receivers and managers**

**108.** The provisions of the Companies Act relating to receivers and managers govern with appropriate changes as the circumstances require the appointment, duties, powers and liabilities of receivers and managers of the assets of any international business company.

### **Striking off**

**109.** (1) If an international business company—

- (a) fails to file with the Registrar any return, notice or document required to be filed under this Act;
- (b) fails to pay any fee or penalty required to be paid under this Act or under any regulations made under this Act; or
- (c) carries on business in breach of section 3;

the Registrar may strike it off the Register.

(2) Where the Registrar intends to strike an international business company off the Register under this section, he shall give the company notice of his intention and a reasonable opportunity to show cause why the company should not be struck off the Register.

(3) After the expiration of time mentioned in the notice the Registrar may, unless cause to the contrary has been shown by the company, strike the company off the Register whereupon it is dissolved, and the Registrar shall publish a notice of the striking off and dissolution of a company under this section in the *Gazette*.

(4) The striking of a company off the Register and its dissolution is effective from the date of the notice published in the *Gazette*.

**Appeal**

**110.** (1) Any person who is aggrieved by the striking of an international business company off the Register under section 109 may, within 90 days of the date of the notice published in the *Gazette*, appeal to a Judge in Chambers.

(2) Notice of an appeal to the Judge in Chambers under subsection (1) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking of an international business company off the Register, suspend the operation of the striking off upon such terms as he considers appropriate, pending the determination of the appeal.

**Restoration of name to Register**

**111.** (1) Where the name of an international business company has been struck off the Register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, and any outstanding fees, restore the international business company to the Register and issue a certificate in a form adapted to the circumstances.

(2) An application to restore an international business company to the Register under subsection (1) must be made within 20 years of the date of the notice published in the *Gazette* under section 109(3).

(3) The company or a creditor, shareholder or liquidator of the company may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the company to the Register and, if the Court is satisfied that it would be just for the company to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(4) Notice of an appeal to the Judge in Chambers under subsection (2) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

**Effect of striking off**

**112.** (1) Where an international business company has been struck off the Register, neither the company nor any director, shareholder, liquidator or receiver of the company, may—

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings commenced after the date the company is struck off the Register, make any claim or claim any right for, or in the name of, the company; or
- (c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where an international business company has been struck off the Register, the company or a director, shareholder, liquidator or receiver of the company, may—

- (a) make application for restoration of the name of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that an international business company is struck off the Register does not prevent—
- (a) the company from incurring liabilities;
  - (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or
  - (c) the appointment by the Court of an official liquidator for the company under section 113.

#### **Appointment of official liquidator**

**113.** The Court may appoint a person to be the official liquidator in respect of an international business company that has been struck off the Register.

#### **Duties of official liquidator**

- 114.** (1) The duties of an official liquidator appointed under section 113 are limited to—
- (a) identifying and taking possession of all assets of the company;
  - (b) calling for claims by advertisement in the *Gazette* and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and
  - (c) applying those assets that he recovers in the following order of priority—
    - (i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and
    - (ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.
- (2) In order to perform the duties with which he is charged under subsection (1), the official liquidator may exercise such powers as the Court considers reasonable to confer on him.
- (3) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.
- (4) When the official liquidator has completed his duties, he shall file with the Registrar a written report of his conduct of the liquidation proceedings.
- (5) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the Court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration is a charge on the Consolidated Fund.
- (6) No liability attaches to an official liquidator—

- (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
- (b) for any failure to locate any assets of the company.

### **Property of dissolved company**

**115.** (1) Subject to section 112, any property of an international business company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When an international business company is restored to the Register under section 111, any property (other than money) that was vested in the Crown under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

- (3) The company is entitled to be paid out of the Consolidated Fund—
  - (a) any money received by the Crown under subsection (1) in respect of the company; and
  - (b) if property (other than money) vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—
    - (i) the value of any such property at the date it vested in the Crown, and
    - (ii) the amount realized by the Crown by the disposition of that property.

### **Disclaimer of property by Crown**

**116.** (1) In this section, “onerous property” means—

- (a) an unprofitable contract; or
- (b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 115.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed—

- (a) within 12 months of the date upon which the vesting of the property under section 115 came to the notice of the Minister; or



- (b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he will or will not disclaim the property, within 3 months of the date upon which he received the notice;

whichever occurs first.

(5) Property disclaimed by the Minister under this section is deemed not to have vested in the Crown under section 115.

(6) A disclaimer under this section—

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section—

- (a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under paragraph (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

## PART 11

### EXEMPTIONS FROM TAX AND REGISTRATION OF DOCUMENTS

#### **Exemptions from tax and registration of documents**

**117.** (1) An international business company which does no business in Anguilla shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside Anguilla or in connection with matters of company administration which may occur in Anguilla.

(2) For purposes of this section, no company shall be considered to be doing business in Anguilla solely because it engages in one or more of the following activities—

- (a) maintaining bank accounts in Anguilla;
- (b) holding meetings of directors or shareholders in Anguilla;

- (c) maintaining corporate or financial records in Anguilla;
- (d) maintaining an administrative or managerial office in Anguilla with respect to assets or activities outside Anguilla;
- (e) maintaining a registered agent in Anguilla;
- (f) investing in stocks or entities of Anguilla companies or being a partner in an Anguilla partnership or a beneficiary of an Anguilla trust or estate.

(3) No estate, inheritance, succession or gift tax is payable by persons who are not persons resident or domiciled in Anguilla with respect to any shares, debt obligations or other securities of an international business company.

(4) Notwithstanding any provisions of the Stamp Act but subject to subsection (5), the following are exempt from the payment of stamp duty—

- (a) an instrument relating to a transfer of property to or by an international business company; and
- (b) an instrument relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act.

(5) Subsection (4) does not apply—

- (a) to an instrument relating to a transfer of property situated in Anguilla, including any interest in land in Anguilla and in shares in a company incorporated under the Companies Act; or
- (b) to any transaction where the international business company concerned is, or at the time of the transaction was, in breach of section 3(1)(e).

### **Exemption for dividends and distributions**

**118.** Any dividend or distribution by an international business company which does no business in Anguilla to another such company, or to individuals or entities which are not citizens or residents of Anguilla, shall be exempt from any tax or withholding provisions of Anguilla law that would otherwise be applicable to the company or the recipient of the dividend or distribution.

## PART 12

### INVESTIGATION OF COMPANIES

#### **Definition of “inspector”**

**119.** In sections 120 to 125, “inspector” means an inspector appointed by an order made under section 120(2).

**Investigation order**

**120.** (1) A shareholder or debenture holder of an international business company, or the Registrar, may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the international business company and any of its affiliated companies.

(2) If, upon an application under subsection (1), it appears to the Court that—

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the incorporation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

the Court may make any order it thinks fit with respect to an investigation of the company and any of its affiliated companies by an inspector.

(3) If a shareholder or debenture holder makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

**Court powers**

**121.** (1) An order made under section 120(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include an order—

- (a) replacing the inspector;
- (b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (c) an order authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) an order requiring any person to produce documents or records to the inspector;
- (e) an order authorising an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribing rules for the conduct of the hearing;
- (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;
- (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

- (h) an order requiring an inspector to make an interim or final report to the Court;
- (i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) an order requiring an inspector to discontinue an investigation.

(2) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.

(3) A report received by the Registrar under subsection (2) must not be disclosed to any person other than in accordance with an order of the Court made under paragraph (1)(i).

### **Inspector's powers**

**122.** An inspector—

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

### **Hearing *in camera***

**123.** (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, must be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

### **Incriminating evidence**

**124.** No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

### **Absolute privilege**

**125.** An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

## PART 13

## MISCELLANEOUS

**Approval of certificates and other documents by the Registrar**

**126.** (1) The Registrar may approve the content and form of certificates or other documents required or permitted to be issued by him under this Act.

(2) The Registrar shall publish all certificates or other documents approved by him under subsection (1) in the *Gazette*.

(3) The Registrar may not approve forms of certificates or other documents under this section if forms of such documents have been prescribed in regulations made under section 132.

**Certificate of good standing**

**127.** (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that an international business company is of good standing if he is satisfied that—

- (a) the company is on the Register; and
- (b) the company—
  - (i) has paid all fees and penalties due and payable under this Act, and
  - (ii) is not otherwise in breach of this Act.

(2) The certificate of good standing issued under subsection (1) must contain a statement as to whether—

- (a) the company has filed with the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has filed with the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of being wound up and dissolved; or
- (d) any proceedings to strike the name of the company off the Register have been instituted.

**Optional registration of directors and shareholders**

**128.** (1) An international business company—

- (a) may elect to register details of its directors; and

- (b) may elect to register details of its shareholders;

with the Registrar.

(2) Notice of an election under subsection (1) must be filed with the Registrar in the prescribed form and shall be accompanied by a notice—

- (a) in the case of an election made under paragraph (1)(a), setting out a list of its current directors; or
- (b) in the case of an election made under paragraph (1)(b), setting out a list of its current shareholders;

in each case containing the information and in the form prescribed.

(3) Upon receipt of a notice of an election made under subsection (1), the Registrar must enter into a Register of Shareholders and Directors to be kept for the purpose—

- (a) the election made by the company; and
- (b) the details of the directors or shareholders of the company, as appropriate, as set out in the list accompanying the notice.

(4) The election takes effect from the date that the notice is filed with the Registrar.

(5) A company that has made an election under subsection (1) must, within 14 days of—

- (a) any change in its directors or its shareholders, as the case may be; or
- (b) any change in the information last provided to the Registrar in respect of any director or shareholder, as the case may be;

file a notice of a change of registered particulars with the Registrar in the prescribed form, and the Registrar shall enter the changed particulars into the Register of Directors and Shareholders.

(6) A company may, by filing a notice with the Registrar in the prescribed form, cancel an election made under subsection (1).

(7) Upon receipt of a notice filed under subsection (6), the Registrar must enter the cancellation of the election in the Register of Shareholders and Directors.

(8) The obligation of a company to file a notice of change of registered particulars ceases in respect of changes that occur after the date that the cancellation of the company's election is entered in the Register of Shareholders and Directors pursuant to subsection (7).

(9) An international business company may not—

- (a) assert against any other persons that a person entered in the Register of Directors and Shareholders under a notice it has filed under subsection (2) or (5) is not or, at the

relevant time, was not a director of or shareholder in the company, as the case may be; or

- (b) rely on a change of particulars that, in breach of this section, it failed to file notice of with the Registrar.

(10) An international business company that contravenes subsection (5) commits an offence.

### **Jurisdiction**

**129.** For the purposes of determining matters relating to title and jurisdiction but not for the purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities of an international business company is in Anguilla.

### **Declaration by Court**

**130.** (1) An international business company may, without the necessity of joining any other party, apply to the Court, by summons supported by affidavit, for a declaration on any question of interpretation of this Act or of the articles or by-laws of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) is deemed, as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in relation to the subject matter of the application.

### **Judge in Chambers**

**131.** A Judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in the exercise of that jurisdiction, the Judge may award such costs as he thinks fit.

### **Regulations**

**132.** The Governor may make such regulations as are required for the better administration of this Act and in particular for—

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copy of any documents or in respect of any action that the Registrar is required or authorised to take under this Act and prescribing the amount thereof;
- (c) prescribing the contents of notices, or other documents required to be filed with the Registrar or to be taken by him.

### **Reports**

**133.** (1) A person who makes or assists in making a report, return, notice or other document—

- (a) that is required by this Act or the regulations to be filed with the Registrar or to be sent to any other person; and
- (b) that—
  - (i) contains an untrue statement of a material fact, or

- (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made;

commits an offence.

(2) A person does not commit an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

### **Punishment of offences**

**134.** (1) A person who commits an offence set out in Column 1 of the Schedule is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(2) Where an offence set out in Column 1 of the Schedule is committed by a body corporate, a director or officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(3) The Proceeds of Criminal Conduct Act applies to an offence that is set out in Column 1 of the Schedule and is indicated in that Column by an asterisk, notwithstanding that the offence is punishable only on summary conviction.

### **General offences**

**135.** Every person who is guilty of an offence under this Act or the regulations is, if no punishment is provided for that offence elsewhere in this Act, liable on summary conviction to a fine of \$10,000.

### **Order to comply**

**136.** When a person is convicted of an offence under this Act or the regulations, the Magistrate's Court may in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.



**Limitation**

**137.** A prosecution for an offence under this Act or the regulations may be instituted at any time within 2 years from the time when the subject-matter of the prosecution arose.

**Recovery of penalties**

**138.** Any fee or penalty payable under this Act or the regulations that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a Magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.

**Company struck off the Register liable for fees, etc.**

**139.** An international business company continues to be liable for all fees, licence fees and penalties payable under this Act notwithstanding that the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.

**Fees, etc. to be paid into Consolidated Fund**

**140.** All fees and penalties to be paid under this Act or the regulations shall be paid into the Consolidated Fund.

**Fees payable to Registrar**

**141.** (1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

(2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until the fees prescribed as payable by the company under the Companies Act have been paid.

**Citation**

**142.** This Act may be cited as the International Business Companies Act, Revised Statutes of Anguilla, Chapter I20.

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**SCHEDULE**

(Section 134)

**OFFENCES AND PENALTIES**

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
3(4)	International business company carrying on restricted business	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
5(11)	International business company using name that has been changed by the Registrar	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
10(4)	International business company failing to file notice of amendment of articles with Registrar	\$5,000	\$5,000	\$50
21(5)	International business company failing to file notice of increase or decrease in authorised capital with Registrar	\$5,000	\$5,000	\$50
23(4)	International business company failing to state whether share certificates will be issued, etc.	\$5,000	\$5,000	
24(5)	International business company failing to properly maintain share register or to keep share register at its registered office or office of its registered agent	\$5,000	\$5,000	
26(7)	Failing to enter details of transfer of share into share register	\$5,000	\$5,000	
33(2)*	International business company making an unlawful distribution	\$25,000	\$25,000, imprisonment for 6 months or both	
36(7)	International business company failing to change registered office	\$10,000	\$10,000	\$50

36(8)	Person providing the registered office of an international business company without a relevant licence	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
37(7)	Company failing to change registered agent	\$10,000	\$10,000	\$50
37(8)	Person acting as registered agent of a non-domestic company without a relevant licence	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
38(7)	Registered agent failing to file copy of notice of intention to cease to act with Registrar	\$10,000	\$10,000	\$100
40(2)	Individual acting as director when disqualified under the Companies Act	\$25,000	\$25,000, imprisonment for 1 year or both	
65(6)	International business company failing to keep records in accordance with section 65	\$10,000	\$10,000	
104(9)	International business company failing to file articles of dissolution	\$5,000	\$5,000	\$50
105(4)	International business company failing to file or advertise resolution to rescind articles of dissolution	\$5,000	\$5,000	\$50
106(3)	Person failing to give notice of insolvency of company to Registrar	\$10,000	\$10,000	\$50
128(10)	International business company failing to file changes in or relating to a director or shareholder	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
133(1)	Person making a false or misleading report or return	\$25,000	\$25,000, imprisonment for 1 year or both	



