

COMMONWEALTH OF DOMINICA

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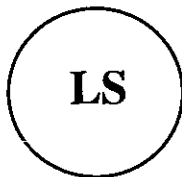
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COMMONWEALTH OF DOMINICA

ACT No. 10 OF 1996

I assent

C.A. SORHAINDO
President.

30th July, 1996.

AN ACT TO PROVIDE FOR THE INCORPORATION, OPERATION AND REGULATION OF INTERNATIONAL BUSINESS COMPANIES AND RELATED MATTERS.

(Gazetted 8th August, 1996.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:**PRELIMINARY**

- 1. (1) This Act may be cited as the –
INTERNATIONAL BUSINESS COMPANIES
(IBC) ACT 1996.**

Short title and
commencement.

- (2) This Act shall come into operation on a date appointed by the Minister by Order published in the *Gazette*.**

2. (1) In this Act –

“Articles” means the Articles of Association of a company incorporated under this Act;

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

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

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

Act No. 21 of 1994. “Companies Act” means the Companies Act of the Commonwealth of Dominica;

“continued” means continued within the context of Part VII;

“Court” means the High Court or a Judge thereof;

“member” means a person who holds shares in a company;

“Memorandum” means the Memorandum of Association of a company incorporated under this Act;

“Minister” means the Minister responsible for Finance;

“person” includes a trust, the estate of a deceased individual, a partnership, and an unincorporated association of persons;

“person resident in Dominica” means a person who ordinarily resides in Dominica or carries on business from an office or other fixed place of business in Dominica but does not include a company incorporated under this Act;

“Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 14(1);

“Registrar” means the Registrar of Companies;

“Resolution of directors” means –

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

“Resolution of members” means –

- (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of –
 - (i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares which were present at the meeting and were voted and not abstained; or
 - (ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of each class or series of shares which were present at the meeting and entitled to vote 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, of the votes of the remaining shares which were present at the meeting and were voted and not abstained; or
- (b) a resolution consented to by –
 - (i) an absolute majority, or such larger majority as may be specified in the Articles, 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, of the votes of each class or series of shares entitled to vote as a class or series and of an absolute majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon;

“securities” means shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

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

“treasury shares” means shares of a company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled.

Act No. 21 of 1994.

(2) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside Dominica shall be a company incorporated under this Act if it is continued as a company incorporated under this Act in accordance with Part VII and references in this Act to a “company incorporated under this Act” shall be construed accordingly.

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

PART I

CONSTITUTION OF INTERNATIONAL BUSINESS COMPANIES

Incorporation.

3. Subject to the requirements of this Act a person may singly or jointly with others by subscribing to a Memorandum and to

Articles incorporate an International Business Company under this Act.

4. No company shall be incorporated under this Act unless immediately upon its incorporation the company is, in keeping with section 5, an International Business Company.

Restriction on incorporation.

5. (1) For purposes of this Act an International Business Company is a company that does not –

Requirements of International Business Companies.

(a) carry on business in Dominica with persons domiciled or resident in Dominica; or

(b) own an interest in real property situate in Dominica other than an interest referred to in subsection (2)(e);

(c) accept banking deposits; or

(d) accept contracts of insurance.

(2) For the purposes of subsection (1)(a) an International Business Company shall not be treated as carrying on business with persons resident in Dominica by reason only of the fact that –

(a) it makes or maintains deposits with a person carrying on business in Dominica;

(b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust and administration companies, investment or financial advisers or other similar persons carrying on business in Dominica;

(c) it prepares or maintains books and records in Dominica;

(d) it holds in Dominica meetings of its directors or members;

(e) it holds an interest or interests (either freehold or leasehold) in real property or properties for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;

Act No. 21 of 1994. (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or the Companies Act; or

Act No. 21 of 1994. (g) shares, debt obligations or the securities in the company are owned by a person domiciled in Dominica or by a company incorporated under this Act or the Companies Act.

Effect of failure to satisfy requirements of section 5.

6. (1) Without affecting the operation of section 99 if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business Company under section 5 or if, having satisfied the requirements, the company subsequently ceases to satisfy the requirements for a continuous period of more than thirty days, the company shall upon the expiration of that period notify the Registrar of that fact.

(2) A company that wilfully contravenes subsection (1) is liable to a penalty of one hundred United States dollars in respect of each day or part thereof during which the contravention continues and a director who knowingly permits the contravention is liable to a like penalty.

Personal liability.

7. Subject to section 74 no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt obligation or default of the company unless specifically provided in this Act or in any other written law except in so far as he may be liable for his own conduct or acts.

Business objects or purposes.

8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or any other written law.

Powers.

9. (1) Subject to any limitations in its Memorandum or Articles, in this Act or any other written law a company incorporated under this Act has the power irrespective of corporate benefit to perform all acts and engage in all activities necessary or conducive

to the conduct, promotion or attainment of the objects or purposes of the company, including powers to do the following:

- (a) to issue registered shares, or shares issued to bearer, or both;
- (b) to issue –
 - (i) voting shares;
 - (ii) non-voting shares;
 - (iii) shares that may have more or less than one vote per share;
 - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events; and
 - (v) shares that may be voted only when held by persons who meet specified requirements;
- (c) to issue common shares, preferred shares, limited shares or redeemable shares;
- (d) to issue shares that entitle participation only in certain assets;
- (e) to issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (f) to issue 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 or to be owned by the company;
- (g) to purchase, redeem or otherwise acquire and hold its own shares;
- (h) to guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and

(i) to protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, of any person having a direct or indirect interest in the company.

(2) For the purposes of subsection (1)(i), notwithstanding any other provision of this Act or of any other written law to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees, to any company, unincorporated association, partnership, foundation or similar entity; and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

(3) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (2), and those rights or interests may be pleaded against any transferee in any such transfer.

Validity of acts of
company.

10. (1) No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases:

- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or
- (b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorised act.

(2) For the purposes of subsection (1)(a), the Court may set aside and prohibit the performance of a contract if –

- (a) the unauthorised act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;
- (b) all the parties to the contract are parties to the proceedings; and
- (c) it appears fair and reasonable to set aside or prohibit the performance of the contract,

and in so doing the Court may, in applying this subsection, award to the company or to the other parties to the contract such compensation as may be reasonable except that in determining the amount of compensation the Court shall not take into account anticipated profits to be derived from the performance of the contract.

11. (1) The word “Limited”, “Sociedad Anonima” or “Societe Anonyme”, “Corporation”, or “Incorporated” or the abbreviation “Ltd”, “S.A”, “Corp”, or “Inc” must be part of the name of every company incorporated under this Act; but a company may use and may be legally designated by either the full or the abbreviated form.

Name of company.

(2) No company shall be incorporated under this Act under a name that –

- (a) is identical with the name under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent;
- (b) contains the words “Assurance”, “Bank”, “Building Society”, “Chamber of Commerce”, “Chartered”, “Co-operative”, “Imperial”, “Insurance”, “Municipal”, “Royal”, “National” or “Dominica” or any word conveying a similar meaning, or any

Act No. 21 of 1994.

other word that, in the opinion of the Registrar, suggests or is calculated to suggest or imply –

- (i) a connection with the State or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the Minister;
- (ii) a connection with a political party or a leader of a political party; or
- (iii) a connection with a university or a professional association recognised by the laws of Dominica unless the university or professional association concerned consents in writing to the use of the proposed name;

(c) is indecent, offensive or, in the opinion of the Registrar, objectionable; or

(d) is prohibited by the Regulations.

(3) A company may amend its Memorandum to change its name.

(4) If a company is incorporated under a name that –

(a) is identical with the name under which a company in existence is already incorporated under this Act or registered under the Companies Act; or

(b) so nearly resembles the name as to be calculated to deceive,

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 sixty days from the date of the notice, the Registrar must strike off that company from the Register.

(5) Subject to subsections (2) and (4), where a 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.

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

(7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for ninety days a name for future adoption by a company under this Act.

12. (1) The Memorandum must include –

Memorandum.

- (a) the name of the company;
- (b) the address in Dominica of the registered office of the company;
- (c) the name and address in Dominica of the registered agent of the company;
- (d) the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) a statement of the authorised capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
- (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;

-
- (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;
- (i) the number of shares to be issued as registered shares and the number of shares to be issued as shares issued to bearer;
- (j) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares;
- (k) if shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer;
- (l) a statement that the liability of members is limited; and
- (m) a statement that the company may not carry on the activities set forth in section 5(1) which statement shall set forth verbatim the activities in that subsection.
- (2) For the purposes of subsection (1)(d), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any written law, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

(3) The Memorandum must be subscribed to by a person in the presence of another person who must sign his name as a witness.

(4) The Memorandum when registered binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum subject to this Act.

13. (1) The Memorandum when submitted for registration must be accompanied by Articles prescribing regulations for the company. ^{Articles.}

(2) The Articles must be subscribed to by a person in the presence of another person who must sign his name as a witness.

(3) The Articles when registered bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles subject to this Act.

14. (1) The Memorandum and the Articles must be submitted to the Registrar who must retain and register them in a Register to be maintained by him and to be known as the Register of International Business Companies. ^{Registration.}

(2) Upon the registration of the Memorandum and the Articles the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

(3) If in the opinion of the Registrar an International Business Company is carrying on its business in a manner detrimental to the interests of Dominica or the interests of its members or is (either in Dominica or elsewhere) contravening the provisions of this or any other Act or any Order made hereunder the Registrar, after consulting the International Business Companies office from time to time as may seem to him necessary, may require the

company forthwith to take such steps as he considers necessary to rectify the matter or may make an order revoking or suspending the registration of the company and requiring its business in Dominica to be wound up.

Certificate of
incorporation.

15. (1) Upon the issue by the Registrar to a company of its certificate of incorporation the company is, from the date shown on the certificate, a body corporate under the name contained in the Memorandum with the full capacity of an individual who is *sui juris*.

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

Amendment of
Memorandum and
Articles.

16. (1) A company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.

(2) A company that amends its Memorandum or Articles must, within fourteen days immediately following the passing of the resolution to amend, submit the amendment to the Registrar and the Registrar must retain and register the amendment in the Register.

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

(4) A company that wilfully contravenes subsection (2) is liable to a penalty of one hundred United States dollars in respect of each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

Copies of
Memorandum and
Articles to
members.

17. A copy of the Memorandum and a copy of the Articles must be given to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

PART II
CAPITAL AND DIVIDENDS

18. No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable.

Shares to be fully paid.

19. Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under this Act 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.

Shares to be issued for value.

20. (1) Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act 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.

Amount of consideration for shares.

(2) A share issued by a company incorporated under this Act 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.

(3) Subject to any limitations in the Memorandum or Articles, treasury shares may be disposed of by a company incorporated under this Act on such terms and conditions as the directors may determine.

21. Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a

Fractional shares.

share and, unless and to the extent otherwise provided in the Memorandum or Articles, 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.

22. (1) Upon the issue by a company incorporated under this Act 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 the Memorandum or Articles, upon the issue by a company incorporated under this Act of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

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

Shares issued by way of dividend.

23. (1) A share issued as a dividend by a company incorporated under this Act 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 company upon liquidation of the company.

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

24. (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, amend its Memorandum to increase or reduce its authorised capital, and in connection therewith, the company may –

Increase or
reduction of
authorised capital.

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

(2) Where a 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 shall be deemed to be capital transferred from surplus to capital.

(3) A company shall, within thirty days immediately following the passing of a resolution to increase its authorised capital, inform the Registrar in writing of the increase.

25. (1) A company incorporated under this Act may amend its Memorandum –

Division and
combination of
shares.

- (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.

Character of shares. **26.** Shares of a company incorporated under this Act are personal property and are not of the nature of real property.

Share certificates. **27.** (1) A company incorporated under this Act must state in its Articles whether or not certificates in respect of its shares will be issued.

(2) If a company incorporated under this Act issues certificates in respect of its shares, the certificates –

(a) must be signed by two directors or two officers of the company, or by one director and one officer; or

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

and the Articles 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 member of the company is *prima facie* evidence of the title of the member to the share specified therein.

Share register. **28.** (1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing –

(a) the names and addresses of the persons who hold registered shares in the company;

(b) the number of each class and series of registered shares held by each person;

-
- (c) the date on which the name of each person was entered in the share register;
 - (d) the date on which any person ceased to be a member;
 - (e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and
 - (f) with respect to each certificate for shares issued to bearer –
 - (i) the identifying number of the certificate;
 - (ii) the number of each class or series of shares issued to bearer specified therein; and
 - (iii) the date of issue of the certificate,

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

(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 company must be able to produce legible evidence of its contents.

(3) No notice of a trust, whether expressed, implied or constructive, shall be entered in the share register.

(4) A copy of the share register, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

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

(6) A company that wilfully contravenes this section is liable to a penalty of twenty-five United States dollars in respect of each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

Rectification of
share register.

29. (1) If –

(a) information that is required to be entered in the share register under section 28 is omitted therefrom or inaccurately entered therein; or

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

a member of the 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) The Court may, in any proceedings under subsection (1), 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) two or more members or alleged members; or

(b) between members or alleged members and the company,

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

Transfer of
registered shares.

30. (1) Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act 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 mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.

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

(4) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act 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 member of a company incorporated under this Act made by his legal 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 member by operation of law, is of the same validity as if the legal 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 after having regard to all the relevant evidence and the circumstances of the case.

31. A share issued to bearer is transferable by delivery of the certificate relating to the share. Transfer of bearer shares.

32. (1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Dominica – Seizure of shares, etc., by foreign power.

(a) by or in connection with any nationalisation, expropriation, confiscation, coercion, force or 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 a company incorporated under this Act, 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 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 interest 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 share of 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.

33. (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares.

(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) Notwithstanding subsection (2), a company may purchase or otherwise acquire its own shares –

- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;
- (b) in exchange for newly issued shares in the company;
- (c) by virtue of the provisions of section 83; and
- (d) pursuant to an order of the Court.

(4) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital pursuant to section 35, 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.

34. Where shares in a company incorporated under this Act – Treasury shares disabled.

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

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

Increase or
reduction of capital.

35. (1) Subject to any limitations in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act 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 transferring an amount of the capital of the company to surplus.

(2) Where a company reduces its capital under subsection (1), the company may –

- (a) return to members any amount received by the company upon the issue of any of its shares;
- (b) purchase, redeem or otherwise acquire its shares out of capital; or
- (c) cancel any capital that is lost or not represented by assets having a realisable value.

(3) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of –

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

(4) 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 the sum of 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.

36. (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property. Dividends.

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

(3) No dividends 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.

Appreciation of
assets.

37. Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act 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.

PART III

REGISTERED OFFICE AND REGISTERED AGENT

Registered office.

38. A company incorporated under this Act shall at all times have a registered office in Dominica maintained by the company or its registered agent.

Registered agent
and Register of
registered agents.

39. (1) A company incorporated under this Act shall at all times have a registered agent in Dominica.

(2) Only a barrister and solicitor or an accountant practising in Dominica may act as a registered agent.

(3) No person shall be a registered agent unless he has been licensed by the Registrar to act as a registered agent.

(4) The original application for licensing shall be in the prescribed form, accompanied by a fee of two hundred and fifty United States dollars and there shall be an annual fee of two hundred and fifty United States dollars payable during the month of January in each year.

(5) The Registrar shall maintain a Register of licensed registered agents in which the following details shall be recorded:

- (a) the name of the registered agent;
- (b) the address of the registered agent;
- (c) the names of the individuals authorised to sign on behalf of any registered agent;
- (d) the date when the first appointment to act as a registered agent was received;

(e) in a case where a registered agent ceases to be a registered agent –

- (i) the date on which the appointment of the registered agent ceased, and
- (ii) whether the cessation was due to failure to renew his licence, death or liquidation or revocation.

(6) The Registrar shall, during the month of February in each year, publish in the *Gazette* a list of registered agents as appeared on the Register of licensed registered agents on 31st January in that year.

(7) Any change in the details kept by the Registrar in the Register of registered agents pursuant to subsection (5) shall be notified immediately by the registered agent to the Registrar, and upon payment of such fee as may be prescribed by the Minister, the Registrar shall record the change in the Register of registered agents.

(8) Where the registered agent of a company desires to cease to act as registered agent and the registered agent is unable to reach an agreement with the company for which he is registered agent concerning his replacement, the following provisions apply:

- (a) the registered agent shall give not less than ninety days written notice to any director or officer of the company of which he is the registered agent at the director's last known address and shall together with the notice provide a list of all registered agents in Dominica with their names and addresses;
- (b) the registered agent shall submit to the Registrar a copy of the notice and list of registered agents referred to in paragraph (a);
- (c) if, at the time of expiry of the notice the company has not adopted a resolution to amend its Memorandum to change its registered agent, the registered agent shall inform the Registrar in writing that the

company has not changed its registered agent whereupon the Registrar shall publish a notice in the *Gazette* that the name of the company will be struck off the Register, unless the company, within thirty days from the date of the publication of the notice in the *Gazette*, registers with the Registrar a copy of a resolution amending its Memorandum to change its registered agent; and

- (d) if a company fails within thirty days from the date of the publication of the notice referred to in paragraph (c) to register with the Registrar a copy of a resolution amending its Memorandum to change its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the *Gazette* a notice that the name of the company has been struck off the Register.

(9) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking off does not affect the liability of any of its members, directors, officers or agents.

Change of registered office or registered agent.

40. A company incorporated under this Act may, by a resolution of directors, amend its Memorandum to change the place of its registered office or to change its registered agent.

Penalty for contravention of sections 38 and 39(1) to (4).

41. A company that wilfully contravenes sections 38 and 39(1) to (4) is liable to a penalty of one hundred United States dollars for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

PART IV

DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

Management by directors.

42. Subject to any limitations in its Memorandum or Articles the business and affairs of a company incorporated under this Act

shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

43. (1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine.

Election, term of office, and removal of directors.

(2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.

(3) Subject to any limitations in the Memorandum or Articles –

(a) a director may be removed from office by a resolution of members or by a resolution of directors; and

(b) a director may 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.

(4) Subject to any limitations in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

44. The number of directors shall be fixed by the Articles and, subject to any limitations in the Memorandum or Articles, the Articles may be amended to change the number of directors.

Number of directors.

45. The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.

Powers of directors.

46. Subject to any limitations in the Memorandum or Articles, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

Emoluments of directors.

Committees of
directors.

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

(2) Subject to any limitations in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under sections 43 and 53.

Meetings of
directors.

48. (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may meet at such times and in such manner, and at such places in or outside Dominica, as the directors may determine to be necessary or desirable.

(2) A director shall be 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, etc.

49. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than seven days' notice of a meeting of directors.

(2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if a majority of the directors 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 shall be deemed to constitute 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.

50. A meeting of directors is duly constituted for all purposes if, at the commencement of the meeting, there are present in person or by alternate one-third, or such larger proportion as may be specified in the Memorandum or Articles, of the total number of directors.

Quorum for meetings of directors.

51. Subject to any limitations in the Memorandum or Articles, action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

Consent of directors.

52. (1) Subject to any limitations in the Memorandum or Articles, a director may, by a written instrument, appoint an alternate who need not be a director.

Alternates for directors.

(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 place of the director.

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

Officers and agents.

(2) Subject to any limitations in the Memorandum or Articles, 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 forth in the Articles or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under this Act.

(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).

54. (1) Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall

Standard of care.

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 Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by a company relieves a director, officer, agent or liquidator of a company from the duty to act in accordance with subsection (1) or from personal liability arising from his management of the business and affairs of the company.

Reliance on records
and reports.

55. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 28, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 66 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
interests.

56. (1) Subject to any limitations in the Memorandum or Articles, if the requirements of subsection (2) or (3) are satisfied, no agreement or transaction between –

- (a) a company incorporated under this Act, 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 or liquidators, 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 directors or liquidators if the votes or consents of all disinterested directors or liquidators are not sufficient 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 to or are known by the members entitled to vote at a meeting of members; and

(b) the agreement or transaction is approved or ratified by a resolution of members.

(4) Subject to any limitations in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for the purposes of determining whether the meeting is duly constituted in accordance with section 50 or otherwise.

57. (1) Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act

Indemnification of
persons by
company.

may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who –

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, 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 a 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 a person acted honestly and in good faith and with a view to the best interests of the company and as to whether a 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 a 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.

58. A company incorporated under this Act 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 57(1). ^{Insurance.}

PART V

PROTECTION OF MEMBERS AND CREDITORS

59. (1) Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and in such places in or outside Dominica as the directors consider necessary or desirable. ^{Meetings of members.}

(2) Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than fifty per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

(3) Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if –

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

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

(5) The following principles shall apply in respect of the joint ownership of shares:

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

Notice of meetings
of members.

60. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall give not less than seven days' notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 28.

(2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding an absolute majority of –

- (a) the total number of shares entitled to vote on all matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where members 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.

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

Quorum for
meetings of
members.

61. A meeting of members is duly constituted for purposes of a resolution of members if, at the commencement of the meeting,

there are present in person or by proxy one-third, or such higher proportion as may be specified in the Memorandum or Articles, of the votes of the shares of each class or series of shares entitled to vote as a class or series thereon and the same proportion, or such higher proportion as may be specified in the Memorandum or Articles, of the votes of the remaining shares entitled to vote thereon.

62. Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

Voting by members.

63. Subject to any limitations in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

Consent of members.

64. (1) Any notice, information or written statement required under this Act to be given by a company incorporated under this Act to members must be served –

Service of notices, etc., on members.

(a) in the case of members holding registered shares, by mail addressed to each member at the address shown in the share register; and

(b) in the case of members holding shares issued to bearer –

(i) in the manner provided in the Memorandum or Articles; or

(ii) in the absence of a provision in the Memorandum or Articles or if the notice, information or written statement can no longer be served as specified in the Memorandum or Articles, by publishing the notice, information or written statement in the *Gazette* and in a newspaper published or

circulated in Dominica and a newspaper in the place where the company has its principal office.

(2) Subject to a requirement in the Memorandum or Articles to give a specific length of notice, the directors must give sufficient notice of meetings of members to members holding shares issued to bearer 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.

(3) For the 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.

65. (1) A summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered post addressed to the company, at its registered office, or by leaving it with, or by sending it by registered post to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement –

(a) was posted in such time as to admit to its being delivered in the normal course of post, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

Books and records
to be kept.

66. (1) A company incorporated under this Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) A company incorporated under this Act shall keep –

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

(3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other place as the directors determine.

(4) A company that wilfully contravenes this section is liable to a penalty of twenty-five United States dollars in respect of each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

67. (1) A member of a company incorporated under this Act 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. Inspection of books and records.

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

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

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

(5) Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of ninety days of his receiving notice of the refusal, apply to the Court for an order for inspection.

Contracts generally. **68.** (1) Contracts may be entered into by or on behalf of a company incorporated under this Act, 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 company and its successors and all other parties to the contract.

(3) Without affecting subsection (1)(a), a contract, agreement or other instrument executed by or on behalf of a 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.

69. (1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where –

Contracts before
incorporation.

- (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 a company incorporated under this Act 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 a 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.

70. (1) If a 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 situate, is entered into by a company incorporated under this Act and the contract,

Contracts for
payment, or
transfer, etc., of
property.

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, any such 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.

71. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act 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.

72. (1) A company incorporated under this Act may, by instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of 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. Power of attorney.

(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.

73. A document requiring authentication or attestation by a company incorporated under this Act 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. Authentication or attestation of documents.

74. If at any time there is no member of a company incorporated under this Act, 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 that time and the person may be sued therefor without joinder in the proceedings of any other person. Company without members.

PART VI

MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSIDENTERS

75. In this Part – Interpretation of Part.

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

“consolidation” means the uniting of two 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 two or more constituent companies into one of the constituent companies;

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

“subsidiary company” means a company at least ninety per cent 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.

76. (1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).

Act No. 21 of 1994.

(2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5) if the surviving company or the consolidated company will satisfy the requirements prescribed for an International Business Company under section 5.

(3) The directors of each constituent company that propose to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case requires –

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) with respect to 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 obligations 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 Memorandum or Articles 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 Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(4) 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.

(5) The following rules 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 members 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 Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;

- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, must be given to each member, whether or not entitled to vote on the merger or consolidation;
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation must be given to each member, 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 members 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 a consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;
 - (ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
 - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
- (e) the articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register; and
- (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.

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

77. (1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act, without the authorisation of the members of any company in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company under section 5.

Merger with
subsidiary.

Act No. 21 of 1994.

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

- (a) the name of each constituent company and the name of the surviving company;
- (b) with respect to 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 member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(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 Memorandum and 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 members of each subsidiary company.

(6) The articles of merger must be submitted to the Registrar who 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 the requirements of this Act in respect of the merger.

Effect of merger or consolidation.

78. (1) A 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 thirty days, as 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 Memorandum and Articles 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 Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;
- (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 Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles 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 member, 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 member, 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 member, director, officer or agent thereof, as the case may be; or
 - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register –
- (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.

79. (1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Dominica 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 Dominica are incorporated.

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

- (a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act, and a company incorporated under the laws of a jurisdiction outside Dominica 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 Dominica, it must submit to the Registrar –

- (i) an agreement that a service of process may be effected on it in Dominica in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;
- (ii) an 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 members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
- (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated.

(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 76 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 Dominica the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 76 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 thirty 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 Dominica the merger or consolidation is effective as provided by the laws of that other jurisdiction.

Disposition of
assets.

80. Any sale, transfer, lease, exchange or other disposition of more than fifty per cent of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described in section 9(2), 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 the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorised by a resolution of members;
- (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each member, 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 members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption of
minority shares.

81. (1) Subject to any limitations in the Memorandum or Articles –

- (a) members holding ninety per cent of the votes of the outstanding shares entitled to vote; and

- (b) members holding ninety per cent 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 76, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

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

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

82. (1) In this section, "arrangement" means –

Arrangements.

- (a) an amendment to the Memorandum or Articles;
- (b) a reorganisation or reconstruction of a company incorporated under this Act;
- (c) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
- (d) a separation of two or more businesses carried on by a company incorporated under this Act;
- (e) a sale, transfer, exchange or other disposition of any part of the property, assets or business of a company incorporated under this Act to any person in exchange for shares, debt obligations or other securities of that other person, or money or other property, or a combination thereof;
- (f) a sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a

company incorporated under this Act held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;

(g) a winding-up and dissolution of a company incorporated under this Act;

(h) any combination of any of the things specified in paragraphs (a) to (g).

(2) If the directors of a company incorporated under this Act determine that it is in the best interests of the company or of the creditors or members thereof, the directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) Upon approval of the plan of arrangement by the directors, the company must make application to the Court for approval of the proposed arrangement.

(4) The Court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal must be given within the period of twenty days immediately following the date of the order, and in making the order the Court may –

(a) determine what notice, if any, of the proposed arrangement is to be given to any person;

(b) approve or reject the plan of arrangement as proposed or with such amendments as it may direct;

(c) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;

(d) determine whether any holder of shares, debt obligations or other securities in the company may

dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 83;

(e) conduct a hearing and permit any interested person to appear.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall –

(a) give notice to the persons to whom the order of the Court requires notice to be given; and

(b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement must be executed by the company and must contain –

(a) the plan of arrangement;

(b) the order of the Court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.

(8) The articles of arrangement must be submitted to the Registrar who must retain and register them in the Register.

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

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

(11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of arrangement.

Rights of dissenters.

83. (1) A member of a company incorporated under this Act 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 member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) a sale, transfer, lease, exchange or other disposition of more than fifty per cent 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 a court having jurisdiction in the matter;
 - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
 - (iii) a transfer pursuant to the power described in section 9(2);
- (d) a redemption of his shares by the company pursuant to section 81; and

(e) an arrangement, if permitted by the Court.

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

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

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

(5) A member to whom the company was required to give notice who elects to dissent must, within twenty 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 member who elects to dissent from a merger under section 77 must give to the company a written notice of his decision to elect to dissent within twenty 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 77.

(6) A member 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 member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven 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 member to purchase his shares at a specified price that the company determines to be their fair value; and if, within thirty days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

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

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the two designated appraisers together shall designate a third appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, exclud-

ing any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

(d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

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

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member 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 member to institute proceedings to obtain relief on the ground that the action is illegal.

PART VII CONTINUATION

84. (1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside Dominica may, if it will satisfy the requirements prescribed for an International Business Company under section 5, continue as a company incorporated under this Act as follows:

Continuation.
Act No. 21 of 1994.

(a) 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 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 a Memorandum under section 12(1); and
 - (v) the amendments to its Memorandum and Articles, or the 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 Memorandum and Articles of the company or the 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, must be submitted to the Registrar who 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 Dominica on payment of the prescribed fee is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

85. (1) A company incorporated under the laws of a jurisdiction outside Dominica that is permitted under section 84 to continue as a company incorporated under this Act, may, after complying with section 84(1)(a) and (b), submit to the Registrar the following documents:

Provisional
registration.

(a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or the 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, cable or by registered post 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 –

(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) sent, or purporting to be sent, 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 submitted to the Registrar, the articles of continuation are rescinded.

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

Certificate of continuation.

86. A certificate of continuation issued by the Registrar under section 84(1)(d) or under section 85(3) is *prima facie* evidence of compliance with all the requirements of this Act in respect of continuation.

Effect of continuation.

87. (1) From the time of the issue by the Registrar of a certificate of continuation under section 84(1)(d) or 85(3) –

(a) the company to which the certificate relates –

- (i) continues to be a body corporate, incorporated under this Act, under the name designated in the articles of continuation;
- (ii) is capable of exercising all the powers of a company incorporated under this Act; and
- (iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside Dominica;

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(b) the Memorandum and Articles of the company, or the equivalent, as amended by the articles of continuation, are the Memorandum and Articles 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 member, director, officer or agent thereof, is released or impaired by its continuation as a 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 under section 84(1)(d) or 85(3) by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, 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 under section 84(1)(d) or 85(3) in respect of the company shall be 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 member 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 under section 84(1)(d) or 85(3) in respect of the

company, any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act –

- (a) the provisions of the Memorandum and Articles continue to govern the company until those provisions are amended to accord with this Act or for a period of two years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
- (b) any provisions of the Memorandum and Articles 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 two 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 Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than two years immediately following the date of the issue of the certificate of continuation.

Continuation under
foreign law.

88. (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of the jurisdiction outside Dominica in the manner provided under those laws.

(2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside Dominica does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside Dominica permit the continuation and the company has complied with those laws.

(3) Where a company incorporated under this Act is continued under the laws of a jurisdiction outside Dominica –

- (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 Dominica;
- (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 member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Dominica; and
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Dominica, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

PART VIII

WINDING-UP, DISSOLUTION, AND STRIKING-OFF

89. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon the expiration of such time as may be prescribed by its Memorandum or Articles for its existence.

Compulsory winding-up and dissolution.

90. (1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

Voluntary winding-up and dissolution.

(2) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members.

Powers of directors
in a winding-up and
dissolution.

91. Upon the commencement of a winding-up and dissolution required under section 89 or permitted under section 90 the directors may only –

- (a) authorise a liquidator, by a resolution of directors, 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 members of the company; and
- (b) determine to rescind the articles of dissolution as permitted under section 95.

Duties of liquidator.

92. (1) 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 members in accordance with the Memorandum and Articles;
- (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 members if so required by the plan of dissolution required by section 94.

(2) A transfer, including a prior transfer, described in section 9(2) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

93. (1) In order to perform the duties imposed on him under section 92, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power –

Powers of liquidator.

- (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 advisors 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 91, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

- (i) to execute any contract, agreement or other instrument in the name of the company or in the 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 subsection (1)(h), a liquidator shall not, without the permission of the Court, carry on for a period in excess of two years the business of a company that is being wound up and dissolved under this Act.

Procedure on winding-up and dissolution.

94. (1) The directors of a company required under section 89 or proposing under section 90 to wind up and dissolve the company must approve a plan of dissolution containing –

- (a) a statement of the reason for 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 submitted to the Registrar or on such date subsequent thereto, not exceeding thirty 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 members of the company;

-
- (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration to be paid to each liquidator; and
 - (g) a statement as to whether the liquidator is required to send to all members 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 90(2) is applicable –

- (a) the plan of dissolution must be authorised by a resolution of members, 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 Memorandum or Articles so provide;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, 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 members 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 must be submitted to the Registrar who must retain and register them in the Register and within thirty days immediately following the date on which the articles of

dissolution are submitted to the Registrar the company must cause to be published in the *Gazette* and in a publication of general circulation in Dominica 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 thirty days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and, 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 the requirements of this Act in respect of the dissolution; and
- (b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Within fourteen days immediately following the date on which the certificate of dissolution has been issued by the Registrar under subsection (6), the liquidator shall cause to be published in the *Gazette* and in a publication of general circulation in Dominica 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) A company that wilfully contravenes subsection (4) is liable to a penalty of fifty United States dollars in respect of every day or part thereof during which the contravention continues, and a director or liquidator who knowingly permits the contravention is liable to a like penalty.

95. (1) In the case of a winding-up and dissolution permitted under section 90, a company may, prior to submitting to the Registrar a notice specified in section 94(4), rescind the articles of dissolution by –

Rescission of winding-up and dissolution.

(a) a resolution of directors in the case of a winding-up and dissolution under section 90(1); or

(b) a resolution of members in the case of a winding-up and dissolution under section 90(2).

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

(3) Within thirty days immediately following the date on which the resolution referred to in subsection (1) has been submitted to 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* and in a publication of general circulation in Dominica and in a publication of general circulation in the country or place where the company has its principal office.

96. (1) Where –

(a) the directors or, as the case may be, the members of a company that is required under section 89 or permitted under section 90 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to be-

Winding-up and dissolution of company unable to pay its debts, etc.

lieve 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 members 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 *mutatis mutandis* to the winding-up and dissolution of the company.

Act No. 21 of 1994.

Winding-up and
dissolution by the
Court.

97. Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the Court under any of the circumstances, in so far as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act may be wound up by the Court and, in that case, the provisions of the Companies Act relating to winding-up and dissolution apply *mutatis mutandis* to the winding-up and dissolution of the company.

Act No. 21 of 1994.

Receivers and
managers.
Act No. 21 of 1994.

98. (1) The provisions of the Companies Act regarding receivers and managers govern *mutatis mutandis* the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

(2) This section comes into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Striking-off.

99. (1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an Interna-

tional Business Company under section 5, the Registrar must serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within thirty days immediately following the date of the service of the notice referred to in subsection (1) he must serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within thirty days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the *Gazette*.

(3) If the Registrar –

- (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or
- (b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection,

he must publish a notice in the *Gazette* that the name of the company will be struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.

(4) At the expiration of a period of ninety days immediately following the date of the publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off, and the Registrar must publish notice of the striking-off in the *Gazette*.

(5) If a company has failed to pay the increased licence fee due under section 105(2), the Registrar shall, within thirty days immediately following the date specified in that subsection, publish in the *Gazette* and serve on the company a notice stating the amount of the licence fee due under section 105(3) and stating that

the name of the company will be struck off the Register if the company fails to pay the licence fee on or before the 31st December next ensuing.

(6) If a company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by the 31st December referred to in that subsection, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing.

(7) A company whose name has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

Restoration to the
Register.

100. (1) If the name of a company has been struck off the Register under section 99(4), the company, or a creditor, member or liquidator thereof, may apply to the Court to have the name of the company restored to the Register.

(2) If upon an application under subsection (1) the Court is satisfied that –

- (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company under section 5; and
- (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees due under section 104 and all licence fees due under section 105 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3) If the name of a company has been struck off the Register under section 99(6), the company, or a creditor, member or liquidator thereof, may, within three years immediately following the date of the striking-off, apply to the Registrar to have the

name of the company restored to the Register, and upon payment to the Registrar of –

- (a) all fees due under section 104;
- (b) the licence fee stated in the notice referred to in section 99(5); and
- (c) a licence fee in the amount stated in the notice referred to in paragraph (b) for each year or part thereof during which the name of the company remained struck off the Register,

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register the name of the company shall be deemed never to have been struck off the Register.

(4) For purposes of this Part, the appointment of an official receiver under section 102 operates as an order to restore the name of the company to the Register.

101. (1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally –

Effect of striking-off.

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

(2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, 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 the name of a 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 102.

Appointment of
official liquidator.

102. The Court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

Dissolution of
company.

103. (1) If the name of a company has been struck off the Register under section 99 and remains struck off continuously for a period of three years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Government to do so, apply to the Court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.

- (2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) 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 considers appropriate, requiring all claims to be submitted to him within a period of not less than ninety 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.

(3) In order to perform the duties with which he is charged under subsection (2) the official liquidator may exercise such powers as the Court considers reasonable to confer on him.

(4) 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.

(5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Government and the company is dissolved.

(6) 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 shall be a charge on the Consolidated Fund.

(7) 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.

PART IX
FEES AND PENALTIES

Fees payable to
Registrar.

- 104.** (1) There shall be paid to the Registrar the following fees:
- (a) four hundred and fifty United States dollars upon the registration by the Registrar of a company incorporated under this Act;
 - (b) fifty United States dollars upon the registration by the Registrar of an amendment to the Memorandum or Articles of a company incorporated under this Act;
 - (c) two hundred and fifty United States dollars upon the registration by the Registrar of articles of merger or consolidation;
 - (d) two hundred and fifty United States dollars upon the registration by the Registrar of articles of arrangement;
 - (e) two hundred and fifty United States dollars upon the submission to the Registrar of articles of continuation;
 - (f) one hundred United States dollars upon the registration by the Registrar of articles of dissolution;
 - (g) one hundred United States dollars upon the registration by the Registrar of a resolution rescinding articles of dissolution;
 - (h) twenty-five United States dollars upon the issue by the Registrar of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing, other than at the time of the registration of a company incorporated under this Act or at the time of the merger, consolidation, arrangement, continuation or dissolution, as the case may be;

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- (i) one hundred United States dollars upon the issue by the Registrar of a certificate of exemption under section 109;
 - (j) fifteen United States dollars upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or a part of a document, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing;
 - (k) ten United States dollars for an inspection of the documents kept by the Registrar pursuant to this Act;
 - (l) ten United States dollars for an inspection of each entry in the Register of International Business Companies;
 - (m) two hundred and fifty United States dollars upon the restoration by the Registrar to the Register, of a company incorporated under this Act, the name of which was struck off the Register;
 - (n) twenty-five United States dollars for the reservation of a name as provided for in section 11(7);
 - (o) four hundred and fifty United States dollars upon submission to the Registrar of documents referred to in section 85(1);
 - (p) fifty United States dollars upon resubmission to the Registrar of the documents referred to in section 85(7); and
 - (q) fifty United States dollars upon the registration by the Registrar of an affidavit attesting to a company incorporated under this Act continuing its incorporation under the laws of another jurisdiction.

(2) The fees payable under subsection (1) may be amended by the Minister by Order published in the *Gazette*.

Annual licence fee:
increases if not
paid.

105. (1) A company the name of which is on the Register on the 31st December in a year shall pay on or before the 30th June of the following year an annual licence fee of five hundred United States dollars.

(2) If a company fails to pay the licence fee due under subsection (1) by the date specified therein the licence fee thereafter is increased by ten per cent.

(3) If a company liable to do so fails to pay the increased licence fee payable under subsection (2) by the 31st October then the licence fee thereafter is increased by fifty per cent of the licence fee specified in subsection (1) in respect of each period of three months it remains unpaid.

Penalties to be paid
to Registrar.

106. All penalties incurred under this Act shall be paid to the Registrar.

Recovery of
penalties, etc.

107. If any fee, licence fee or penalty payable under this Act remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar, the Registrar shall strike the name of the company off the Register; but if within a period of sixty days all fees, interest and penalties are paid to the Registrar the name of the company shall be restored to the Register.

Company struck off
liable for fees, etc.

108. A company incorporated under this Act continues to be liable for fees, licence fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and those fees, licence fees and penalties have priority over all other claims against the assets of the company.

Exemptions from
tax, etc., for twenty
years and Exchange
Control.

109. (1) Notwithstanding the provisions of any other written law a company incorporated under this Act shall, subject to subsection (3), be exempt from the payment of taxes, duties and similar charges (whether or not the same are presently levied on persons within Dominica), for a period of twenty years from the date of incorporation.

(2) The Exchange Control Ordinance does not apply to a company incorporated under this Act. Cap. 130.

(3) The Registrar shall, on payment of the prescribed fee, issue a certificate of exemption for the purposes of subsection (1) to a company entitled to the exemption.

PART X MISCELLANEOUS

110. The Minister may make Regulations as he considers necessary for the better implementation of the provisions and purposes of this Act, and in particular, without prejudice to the generality of the foregoing, the Minister may make Regulations – Power of Minister to make Regulations.

- (a) with respect to the duties to be performed by the Registrar under this Act and in so doing may prescribe the place where the office for the registration of International Business Companies is located;
- (b) with respect to the conduct, duties and responsibilities of registered agents;
- (c) prescribing everything that is required or permitted to be prescribed by this Act; and
- (d) respecting any other matter required for the efficient administration of this Act.

111. (1) The Registrar shall, upon the request of any person and payment of the prescribed fee, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that – Certificate of good standing.

- (a) the name of the company is on the Register; and
- (b) the company has paid all fees, licence fees and penalties due and payable.

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

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to 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.

(3) A certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy of or extract from any document or any part of a document of which he has custody certified by the Registrar, is *prima facie* evidence of the matters contained therein.

Non-disclosure of
information.

112. (1) Except as provided in –

- (a) section 113 of this Act; and
- (b) the Eastern Caribbean Central Bank Act,

no person who has acquired knowledge in his capacity as, or through the office of, director, manager, secretary, officer, agent or employee of a company incorporated under this Act or as its auditor or receiver or official liquidator shall disclose in any form to any person or governmental authority, whether within or outside Dominica, any facts or matters relating to the assets, liabilities, transactions, members or directors of, or any other information whatsoever in respect of, a company incorporated under this Act except –

- (i) with the written authorisation of the company to which the information relates; or

Ch. 74:01.

- (ii) when lawfully required to make disclosure by a court of competent jurisdiction in Dominica.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on summary conviction, to a fine of fifteen thousand United States dollars and to imprisonment for two years.

113. The Attorney General may at the request of any person apply to the Court for an order requiring the disclosure by a company incorporated under this Act of any facts or matters relating to the assets, liabilities, transactions, members or directors of, or any other information whatsoever in respect of the company, if he considers that the disclosure of such information is relevant to the investigation of any activity actually, or suspected to be, criminal under the laws of Dominica.

Attorney General
may require
disclosure of
information.

114. (1) Where any company incorporated under this Act or a director thereof is charged with an indictable offence involving fraud, the Attorney General may apply to the Court for an order (in this Act referred to as a “restraint order”) to prohibit any person from dealing with any realisable property of a defendant, subject to such conditions as may be specified in the order.

Restraining order
and forfeiture.

(2) In subsection (1), “realisable property” means –

- (a) any property held by a defendant; and
- (b) any property held by a person to whom a defendant has directly or indirectly made a gift which there is reasonable cause to believe was obtained by proceeds of the offence charged.

(3) If a defendant is convicted of the offence charged the Court shall determine whether he has benefited from the offence. If the Court so finds, the Court shall make a confiscation order for the amount, including realisable property, which the Court assesses to be the value of the defendant’s proceeds of the offence.

(4) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the Court assesses to be the value of his proceeds of the offence the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the Court to be the amount that might be so realised.

Transfer to
International
Business
Companies Office
Limited.

115. (1) If it appears to the Minister that –

(a) a body corporate has been established which is able and willing to discharge all or any of the functions to which this Act applies; and

(b) the rules and regulations of the body corporate afford investors an adequate level of protection,

he may make an Order transferring all or any of those functions to that body.

(2) The body to which functions are transferred by the first Order to be made under subsection (1) shall be known as the International Business Companies Office Limited.

(3) The International Business Companies Office Limited shall have in Dominica power to perform regulatory, investigatory and enforcement functions in relation to the activities of International Business Companies in Dominica.

Jurisdiction.

116. 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 a company incorporated under this Act is in Dominica.

Declaration by
Court.

117. (1) A company incorporated under this Act may, without the necessity of joining any other party, apply to the Court by summons, supported by an affidavit, for a declaration on any question of interpretation of this Act or of the Memorandum or Articles of the company.

(2) A person acting on a declaration made by the Court as result of an application under subsection (1) shall be deemed, so far

as the discharge of any fiduciary or professional duty is concerned, to have properly discharged his duties in the subject-matter of the application.

118. A Judge 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 costs as may be just.

Jurisdiction of
Judge in Chambers.

Passed in the House of Assembly this 26th day of June, 1996.

M. ALBERTHA JNO. BAPTISTE
Clerk of the House of Assembly.

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau
(Price \$18.20)

