

CHAPTER 222

THE INTERNATIONAL BUSINESS CORPORATIONS ACT

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INTERNATIONAL BUSINESS CORPORATIONS

(1st March, 1983.)

28/1982.
3/1984.
19/1989.

An Act to provide a regime of corporate law for international business corporations operating from within Antigua and Barbuda.

1. This Act may be cited as the International Business Corporations Act. **Short title.**

2. (1) In this Act—

Interpretation.

(a) "articles" means, unless qualified,

(i) the original or restated articles of incorporation, of amendment, of amalgamation, of continuance, of re-organisation, of dissolution, and of revival, and

(ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a corporation under this Act;

(b) "continued corporation" refers to a corporation that has come under this Act pursuant to a certificate of continuance and that has not ceased to be a corporation under this Act;

(c) "corporation" means a body corporate that is incorporated or continued under this Act and that has not ceased to be a corporation under this Act;

(d) "court" means the High Court;

(e) "debt obligation" means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation whether secured or unsecured;

- (f) "Director"⁷ refers to the Director of International Business Corporations;
- (g) "existing off-shore company"⁷ means a body corporate described in section 176;
- (h) "existing Act" means the Companies Act;
- (i) "international trade or business" refers to any activity described as an international trade or business in section 4;
- (j) "officer" in relation to a body corporate means
 - (i) the chairman, deputy chairman, president, or vice-president;
 - (ii) the managing director, the general manager, comptroller, the secretary or the treasurer; or
 - (iii) any other individual who performs for the body corporate functions similar to those normally performed by the holder of any office specified in subparagraph (i) or (ii);
- (k) "prescribed" means prescribed by the regulations;
- (l) "resident" refers to a resident of Antigua and Barbuda as defined in section 270;
- (m) "security" means a share of any class or series of shares of a corporation or a debt obligation of a corporation and includes a certificate evidencing any such share or debt obligation;
- (n) "unanimous shareholder agreement" means an agreement described in section 124.

(2) The Caricom region is the region comprised within the jurisdictional areas of the Member States of the Community of States established by the Treaty signed on the 4th day of July, 1973, at Chaguaramas.

(3) The expressions "appropriate official", "Superintendent", "Supervisor" and "licensee" are defined in Part III.

(4) Other words and phrases of a technical nature that are to be read or construed in this Act in a particular sense or in a particular manner are defined or construed for that purpose in Part V; and, in particular, the expressions "shall", "may" and "must" are used in this Act in the manner described in sections 367 to 369, in order to reduce the ambiguity inherent in those expressions.

INTERNATIONAL BUSINESS ENTERPRISES

3. (1) No association, partnership, society, body or other group may be formed for the purpose of carrying on any international trade or business from within or outside Antigua and Barbuda unless it is a corporation under this Act. **Proscribed enterprises.**

(2) No natural person may carry on any international banking, trust or insurance business from within Antigua and Barbuda; but this provision does not apply to the provision of services to an international banking, trust or insurance corporation as a director, officer, agent or employee, or as a barrister, solicitor, accountant, investment adviser or by the provision to a corporation of any other prescribed service or activity carried on in Antigua and Barbuda.

(3) A body corporate incorporated outside Antigua and Barbuda and registered under the existing Act on the commencement of this Act whose objects include the carrying on of an international banking, trust or insurance business shall, one year after the commencement of this Act, cease to carry on that business from within Antigua and Barbuda; and section 177 applies mutatis mutandis in respect of that period of one year.

4. (1) For the purposes of this Act, international trade or business comprises: **International trade or business.**

- (a) international banking;
- (b) international trust business;
- (c) international insurance;

(d) international manufacturing; and

(e) other international trading or commercial activities.

(2) International banking is the carrying on from within Antigua and Barbuda of banking in any currency that is foreign in every country of the Caricom Region; but the keeping of external accounts for residents in any foreign currency under exchange control licence or regulation is not carrying on international banking by virtue of that activity alone.

(3) International trust business is

(a) the acting as trustee of funds in a currency that is foreign in every country within the Caricom region,

(b) the managing or administering of real property situated outside Antigua and Barbuda or the managing or administering of personal property of persons who are not resident within Antigua and Barbuda, or

(c) the managing or administering of any property of a corporation other than its real property situated in Antigua and Barbuda.

(4) International insurance is the undertaking of contracts of insurance

(a) related to insurable risks or hazards in respect of any person, thing or matter outside the Caricom region or in respect of any event occurring outside the Caricom region, or to all of them, and

(b) under which

(i) premiums are payable in a currency that is foreign in every country of the Caricom region, or

(ii) the extent of liability is determinable in such a currency.

(5) International manufacturing is the manufacturing, preparation, processing, assembling, or packaging of any products within Antigua and Barbuda for which the sole intended

destination is one or more countries outside the Caricom region.

(6) Other international trading or commercial activities are:

- (a) service as a director of another corporation;
- (b) the carrying on of the business of underwriter, broker, agent, dealer or seller in respect of international insurance;
- (c) the provision of any services in or outside Antigua and Barbuda for a corporation, other than any service or activity required for the purpose of enabling the corporation to carry on business from within Antigua and Barbuda; and
- (d) the provision of any service or activity of a commercial, industrial, trading or business nature from within or outside Antigua and Barbuda,
 - (i) to persons outside the Caricom region or in respect of matters or things outside the Caricom region, or
 - (ii) to other corporations or in respect of an international trade or business of another corporation;

but exclusive of any professional or labour services rendered within Antigua and Barbuda and exclusive of the provision of supplies or the provision of maintenance services within Antigua and Barbuda by residents.

PART I

CONSTITUTION OF CORPORATIONS

DIVISION A: INCORPORATION

5. (1) Any two citizens of Antigua and Barbuda resident in Antigua and Barbuda, one of whom must be entitled to practise as a Barrister-at-Law or Solicitor in Antigua and Barbuda or a body corporate authorized by a resolution of the Cabinet of Antigua and Barbuda to perform any functions under this section may incorporate a corporation under **Incorporation.**

this Act by signing and sending articles of incorporation to the Director of International Business Corporations.

(2) Articles of incorporation must be substantially in the form set out in Schedule I.

Formalities.

6. (1) Articles of incorporation must set out, in respect of the proposed corporation,

- (a) the proposed name of the corporation;
- (b) the classes and any maximum number of shares that the corporation is authorised to issue; and
- (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and
- (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
- (c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
- (d) the number of directors or the minimum and maximum number of directors of the corporation;
- (e) that no securities of the corporation will be distributed to the public, in contravention of section 365, in Antigua and Barbuda; and
- (f) that the corporation is restricted to carrying on international trades or businesses and any restriction on the kinds of international trades or businesses that the corporation can carry on.

(2) The articles may set out any provisions permitted by this Act, or by any other law, to be set out in the by-laws of the corporation.

Required votes.

7. (1) Subject to subsection (2), if the articles or any unanimous shareholder agreement requires a greater number of votes of directors or shareholders than that required by

this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 70.

8. An incorporator must send to the Director with the articles of incorporation the documents required by subsection (7) of section 67, subsection (1) of section 129 and section 327. **Documentation.**

CERTIFICATE OF INCORPORATION

9. Upon receipt of articles of incorporation, the Director must issue a certificate of incorporation in accordance with section 327 and the certificate is conclusive proof of the incorporation of the corporation named in the certificate. **Certificate of Incorporation.**

10. A corporation comes into existence on the date shown in its certificate of incorporation, except that the date of commencement of corporate existence may be specified in the articles of incorporation to be: **Effective date.**

(a) the date of execution and acknowledgement of the articles of incorporation if the articles are filed with the Director within 10 days, exclusive of legal holidays, after such date,

(b) a date subsequent to, but not later than 90 days, from the date of execution and acknowledgement of the articles of incorporation.

CORPORATE NAME

11. A following word or abbreviation must be part of the name of every corporation: **Corporate name.**

(a) the word "limited", "corporation" or "incorporated" or the abbreviation "ltd.", "corp." or "inc." or

(b) a word or abbreviation used in another country to indicate that the liability of the shareholders of a body corporate is limited;

but a corporation may use and may be legally designated by either the full or the abbreviated form.

Reserved name. **12.** A corporation shall not be incorporated with or have a name

(a) that is prohibited or refused under sections 339 to 342; or

(b) that is reserved for another corporation or intended corporation under section 338.

Name change. **13.** Where, through inadvertence or otherwise, a corporation

(a) comes into existence with a name that contravenes section 12,

(b) is continued as a corporation under this Act with a name that contravenes section 12, or

(c) is, upon an application to change its name, granted a name that contravenes section 12,

the Director may direct the corporation to change its name in accordance with section 161.

Continued name. **14.** Notwithstanding sections 12 and 13, a continued corporation may retain the name it lawfully had before its continuance under this Act, if that name is not contrary to section 339 or, if the corporation had been an existing off-shore company, the name does not refer to banking, trust or insurance unless it is carrying on such an international business.

Name revocation. **15.** Where a corporation has been directed under section 13 to change its name and has not, within sixty days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Director may revoke the name of the corporation and assign to it a name; and, until changed in accordance with section 161, the name of the corporation is thereafter the name so assigned.

Assigned name. **16.** (1) When a corporation has had its name revoked and a name assigned to it under section 15, the Director must issue a certificate of amendment showing the new name

of the corporation and must forthwith give notice of the change in the *Gazette*.

(2) Upon the issue of a certificate of amendment under subsection (1), the articles of the corporation to which the certificate refers are amended accordingly on the date shown in the certificate.

PRE-INCORPORATION AGREEMENTS

17. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract. **Pre-incorporation contracts.**

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

(3) When a corporation adopts a contract under subsection (2),

(a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party to it; and

(b) a person who purported to act in the name of the corporation or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the corporation is adopted by the corporation, a party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the corporation and a person who purported to act in the name of the corporation or on its behalf; and the court may, upon the application, make any order it thinks fit.

(5) If expressly so provided in the written contract, a person who purported to act for or on behalf of a corporation before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

DIVISION B: CORPORATE CAPABILITIES

Capacity and powers.

18. (1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person of full age and capacity.

(2) A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any other country to the extent that the laws of Antigua and Barbuda and of that country permit.

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

Powers reduced.

19. A corporation shall not carry on any international trade or business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a corporation exercise any of its powers in a manner contrary to its articles.

Validity of acts.

20. For the avoidance of doubt and without limiting the effect of section 18, no act of a corporation, including any transfer of property to or by the corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

Notice not presumed.

21. No person is affected by or presumed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed with the Director or is available for inspection at any office of the corporation.

No disclaimer allowed.

22. A corporation or a guarantor of an obligation of the corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation

(a) that any of the articles, or by-laws of the corporation or any unanimous shareholder agreement has not been complied with;

(b) that the persons named in the most recent notice to the Director under section 67 or 74 are not the directors of the corporation;

(c) that the place named in the most recent notice sent to the Director under section 129 is not the registered office of the corporation;

(d) that a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such a director, officer or agent;

(e) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine; or

(f) that the financial assistance referred to in section 53 or the sale, lease, or exchange of property referred to in section 125 was not authorised;

except where that person has, or ought to have, because of his position with or relationship to the corporation, knowledge to the contrary.

23. (1) A contract made according to this section on behalf of a corporation **Contracts of corporation.**

(a) is effective in law in point of form and binds the corporation and the other party to the contract; and

(b) may be varied or discharged in the like manner that it is authorised by this section to be made.

(2) A contract that, if made between natural persons, would, by law, be required to be in writing under seal must be made on behalf of a corporation in writing under seal.

(3) A contract that, if made between natural persons, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby

may be made or evidenced in writing signed in the name or on behalf of the corporation.

(4) A contract that, if made between natural persons, would, by law, be valid although made by parol only and not reduced to writing may be made by parol on behalf of the corporation.

(5) An agreement or other instrument executed on behalf of a corporation by a director, officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed to the agreement or instrument.

Bills, notes.

24. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of the corporation, if made, accepted or endorsed in the name of the corporation or if expressed to be made, accepted or endorsed on behalf or on account of the corporation.

Power of attorney.

25. (1) A corporation may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in or outside Antigua and Barbuda.

(2) A deed signed by a person empowered as provided in subsection (1) binds the corporation and has the same effect as if it were under the corporation's seal.

Corporate seal.

26. (1) A corporation may have a common seal with its name engraved thereon in legible characters; except when required by any enactment to use its common seal, the corporation may, for the purpose of sealing any document, use its common seal or any other form of seal.

(2) If authorised by its by-laws, a corporation may have for use in any country other than Antigua and Barbuda or for use in any place outside Antigua and Barbuda, an official seal, which must be a facsimile of the common seal of the corporation.

DIVISION C: SHARE CAPITAL

SHARES

27. (1) Shares in a corporation must be in registered or bearer form and with or without nominal or par value. **Nature of shares.**

(2) Shares in a corporation are personal property.

(3) Bearer share certificates shall include a legend that the certificate is not transferable to a resident of Antigua and Barbuda.

(4) Subject to subsection (5), each share in a corporation must be distinguished by an appropriate designation.

(5) If at any time all the issued shares in a corporation, or all the issued shares in a corporation of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued, or, as the case may be, all the shares for the time being issued for the particular class.

28. When a corporation has only one class of shares the rights of the holders are equal in all respects and include **If only one class.**

(a) the right to vote at any meeting of shareholders;

(b) the right to receive any dividend declared by the corporation;

(c) the right to receive the remaining property of the corporation on dissolution.

29. The articles of a corporation may provide for more than one class of shares; and, if they so provide, **share classes.**

(a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the articles; and

(b) the rights set out in section 28 must be attached to the shares of the corporation but all of those rights need not be attached to a single class of shares.

Share issue.

30. Subject to the articles, the by-laws, any unanimous shareholder agreement and section 35, shares may be issued at such times and to such persons and for such consideration as the directors may determine.

Consideration.

31. (1) A share may not be issued until it is fully paid

(a) in money, or

(b) in property or past service that is the fair equivalent of the money that the corporation would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and re-organisation and payments for property and past services reasonably expected to benefit the corporation.

(3) For the purposes of this section with respect to registered shares property includes a promissory note in negotiable form.

Stated capital accounts.

32. (1) Subject to subsection (8), a corporation must maintain a separate stated capital account for each class and series of shares that it issues.

(2) A corporation must add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A corporation may not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A corporation must not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a corporation proposes to add an amount to a stated capital account that it maintains in respect of a class

or series of shares, that addition to the stated capital account must be approved by special resolution if

(a) the amount to be added was not received by the corporation as consideration for the issue of shares, and

(b) the corporation has issued any outstanding shares of more than one class or series.

(6) Notwithstanding section 31 and subsection (2),

(a) when, in exchange for property, a corporation issues shares

(i) to a body corporate that was an affiliate of the corporation immediately before the exchange, or

(ii) to a person who controlled the corporation immediately before the exchange,

the corporation, subject to subsection (4), may, to the stated capital accounts that are maintained for the shares of the classes or series issued, add the amount agreed, by the corporation and the body corporate or person, to be the consideration for the shares so exchanged;

(b) when a corporation issues shares in exchange for shares of a body corporate that was an affiliate of the corporation immediately before the exchange, the corporation may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

(c) when a corporation issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the corporation, the corporation may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When an existing off-shore company is continued under this Act,

(a) then, notwithstanding subsection (2), it is not required to add to a stated capital account any consideration received by it before it became a continued corporation, unless the share in respect of which the consideration is received is issued after the corporation was continued under this Act;

(b) an amount unpaid in respect of a share issued by the existing off-shore company before it was so continued must be added to the stated capital account that is maintained for the shares of that class or series; and

(c) its stated capital account for the purposes of

(i) subsection (2) of section 39,

(ii) section 44,

(iii) paragraph (b) of subsection (2) of section 55, and

(iv) paragraph (a) of subsection (2) of section 172, includes the amount that would have been included in stated capital if the corporation had been a corporation incorporated under this Act.

(8) Subsections (1) to (7) and other provisions of this Act relating to a stated capital account do not apply to an open-end mutual fund corporation; that is to say, a corporation that carries on only the business of investing in the securities of foreign companies or in the securities of other corporations, or both, the consideration it receives for the shares it issues and all or substantially all of those shares are redeemable upon the demand of shareholders.

Series shares.

33. (1) The articles of a corporation may authorise the issue of any class of shares in one or more series and may authorise the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors must send to the Director articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a corporation of articles of amendment designating a series of shares, the Director must issue to the corporation a certificate of amendment in accordance with section 327.

(6) The articles of a corporation are amended accordingly on the date shown in the certificate of amendment issued under subsection (5).

34. (1) Unless the articles of a corporation otherwise provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the corporation holding shares of that class; and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Unless the articles of a corporation otherwise provide, the shareholders of the corporation have no pre-emptive right in respect of shares to be issued by the corporation

(a) for a consideration other than money;

(b) as a share dividend; or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

Conversion privilege.

35. (1) A corporation may grant conversion privileges, options or rights to acquire shares of the corporation but must set out the conditions of the conversion privileges in any instruments issued as evidence of the conversion privileges.

(2) Conversion privileges, options and rights to acquire securities of a corporation may be made transferable or non-transferable; and options and rights to acquire securities may be made separable or inseparable from any securities to which they are attached.

Reserve shares.

36. Where a corporation

(a) has granted privileges to convert any securities issued by the corporation into shares or into shares of another class or series of shares, or

(b) has issued or granted options or rights to acquire shares,

if the articles of the corporation limit the number of authorised shares, the corporation must reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

Own shares.

37. (1) Subject to subsection (2), and except as provided in sections 38 to 41, a corporation shall not hold shares in itself or in its holding body corporate.

(2) When a subsidiary body corporate holds shares in a corporation, the corporation must cause the subsidiary body corporate of the corporation to sell or otherwise dispose of those shares within five years from the date that the body corporate became a subsidiary of the corporation.

(3) When a subsidiary body corporate of a continued corporation holds shares of the continued corporation, the corporation must cause the subsidiary body corporate to sell or otherwise dispose of those shares within five years from the date that the corporation became a continued corporation.

Exceptions.

38. (1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body cor-

porate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

(2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) A corporation that carries on the business of international manufacturing or international shipping or any other trading or commercial activities may hold shares in itself or in its holding body corporate.

39. (1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

Acquisition of own shares.

(2) A corporation shall not make any payment to purchase or otherwise acquire shares issued by it, if there are reasonable grounds for believing that

(a) the corporation is unable or would, after that payment, be unable to pay its liabilities as they become due, or

(b) the realisable value of the corporation's assets would after that payment be less than the aggregate of its liabilities and stated capital of all classes.

40. (1) Notwithstanding subsection (2) of section 44, but subject to subsection (3) and to its articles, a corporation may purchase or otherwise acquire its own issued shares

Other acquisition.

(a) to settle or compromise a debt or claim asserted by or against the corporation;

(b) to eliminate fractional shares;

(c) to fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

(2) Notwithstanding subsection (2) of section 41, a company may purchase or otherwise acquire its own issued shares

(a) to satisfy the claim of a shareholder who dissents under section 191, or

(6) to comply with an order under section 204.

(3) A corporation shall not, under subsection (1), make any payment to purchase or acquire shares issued by it if there are reasonable grounds for believing that

(a) the corporation is unable or would, after that payment, be unable to pay its liabilities as they become due, or

(6) the realisable value of the corporation's assets would after that payment be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

Redeemable shares.

41. (1) Notwithstanding subsection (2) of section 39 or subsection (3) of section 40, but subject to subsection (2) of this section and to its articles, a corporation may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

(2) A corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

(a) the corporation is unable or would, after that payment, be unable to pay its liabilities as they become due, or

(6) the realisable value of the corporation's assets would, after that payment, be less than the aggregate of

(i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or before the holders of the shares to be purchased or redeemed.

42. Subject to section 46, a corporation may accept **Donated shares.** from any shareholder a share of the corporation surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 44.

43. A corporation holding shares in itself or in its **Voting thereon.** holding body corporate shall not vote or permit those shares to be voted unless the corporation

(a) holds the shares in the capacity of a legal representative, and

(b) has complied with section 126.

44. (1) Subject to subsection (3), a corporation may **Stated capital reduction.** by special resolution reduce its stated capital by

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share,

(b) returning any amount in respect of consideration that the corporation received for an issued share, whether or not the corporation purchases, redeems or otherwise acquires any shares or fraction thereof that it issued, and

(c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section must specify the stated capital accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A corporation shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that

(a) the corporation is unable or would, after that reduction, be unable to pay its liabilities as they become due, or

(b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

(4) A corporation that reduces its stated capital under this section must, not later than thirty days after the date

of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the corporation.

(5) A creditor may apply to the court for an order compelling a shareholder or other recipient

(a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or

(b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the act complained of.

(7) This section does not affect any liability that arises under section 83 or 84.

**Stated capital
adjustment.**

45. (1) Upon a purchase, redemption or other acquisition by a corporation under section 39, 40, 41, 59 or 191 or paragraph (f) of subsection (3) of section 204, of shares or fractions thereof issued by it, the corporation must deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A corporation must deduct the amount of a payment made by the corporation to a shareholder under paragraph (g) of subsection (3) of section 204 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation must adjust its stated capital accounts in accordance with any special resolution referred to in subsection (2) of section 44.

(4) Upon a conversion of issued shares of a class into shares of another class or upon a change under section 161, 174 or 204 of issued shares of a corporation into shares of another class or series, the corporation must

(a) deduct, from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

(b) add the result obtained under paragraph (a), and any additional consideration received by the corporation pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a corporation issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

46. Shares or fractions of shares issued by a corporation and purchased, redeemed or otherwise acquired by the corporation must be cancelled or, if the articles of the corporation limit the number of authorised shares, the shares or fractions may be restored to the status of authorised but unissued shares. **Cancellation of shares.**

47. For the purposes of sections 45 and 46, a corporation holding shares in itself as permitted by section 38 is deemed not to have purchased, redeemed or otherwise acquired those shares. **Presumption re own shares.**

Changing share
class.

48. (1) Shares issued by a corporation and converted or changed under section 161, 174 or 204 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a corporation and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series must, unless the articles of amendment or reorganisation otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Debt obligations.

49. (1) Debt obligations issued, pledged or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged or deposited is repaid.

(2) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement applicable to the obligations may be re-issued, pledged or deposited to secure any obligation of the corporation then existing or thereafter incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debt obligations.

Share purchase
contract.

50. (1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 41 or 42.

(2) In any action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 41 or 42.

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who is entitled

(a) to be paid as soon as the corporation is lawfully able to do so, or

(b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.

(4) The directors of a corporation acting honestly and in good faith with a view to the best interests of the corporation may authorise the corporation to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the corporation from the corporation.

51. A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that **Prohibited dividend.**

(a) the corporation is unable or would, after the payment, be unable to pay its liabilities as they become due, or

(b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

52. (1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to subsection (2) and section 51, a corporation may pay a dividend in money or property. **Payment of dividend.**

(2) A corporation shall not pay a dividend out of unrealised profits.

(3) If shares of a corporation are issued in payment of a dividend, the value of the dividend stated as an amount in money must be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

53. When circumstances prejudicial to the corporation exist, the corporation or any corporation with which it is affiliated shall not, except as permitted by section 56, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise, **Illicit loans by corporation.**

(a) to a shareholder, director, officer or employee of the corporation or affiliated corporation, or

(b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or a corporation with which it is affiliated.

Permitted gifts.

54. If a corporation is authorised to do so by its articles, then, if no circumstances prejudicial to the corporation exist, the corporation may, otherwise than out of its stated capital, make gifts of money to any person, whether or not he is a shareholder of the corporation.

Prejudicial circumstances.

55. Circumstances prejudicial to the corporation exist in respect of financial assistance mentioned in section 53 or in respect of a gift of money mentioned in section 54 when there are reasonable grounds for believing that

(a) the corporation is unable or would, after giving the financial assistance or gift of money, be unable to pay its liabilities as they become due, or

(b) the realisable value of the corporation's assets excluding the amount of any financial assistance in the form of loans and in the form of assets pledged or encumbered to secure a guarantee would, after giving the financial assistance or gift of money, be less than the aggregate of the corporation's liabilities and stated capital of all classes.

Permitted loans.

56. Notwithstanding section 53, a corporation may give financial assistance, by means of a loan, guarantee or otherwise,

(a) to any person in the ordinary course of business, if the lending of money is part of the ordinary business of the corporation;

(b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation;

(c) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;

(d) to a subsidiary body corporate of the corporation; and

(e) to employees of the corporation or any of its affiliates

- (i) to enable or assist them to purchase or erect living accommodation for their own occupation,
- (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee, or
- (iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

57. A contract made by a corporation contrary to section 53 may be enforced by the corporation or by a lender for value in good faith without notice of the contravention. **Enforcement of illicit loans.**

58. The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection (5) of section 44, subsection (2) of section 124 or subsection (5) of section 312. **Immunity of shareholders.**

59. (1) Subject to this Act, the articles of a corporation may provide that the corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the corporation including an amount unpaid in respect of a share issued by a corporation on the date it was continued under this Act. **Lien on shares.**

(2) A corporation may enforce a lien referred to in subsection (1) in accordance with its by-laws.

DIVISION D: MANAGEMENT OF CORPORATIONS

DIRECTORS AND OFFICERS

60. Subject to any unanimous shareholder agreement, the directors of a corporation must **Duty to manage corporation.**

(a) exercise the powers of the corporation directly or indirectly through the employees and agents of the corporation, and

(b) direct the management of the business and affairs of the corporation.

Number of directors and residence.

61. A corporation must have at least one director, but a director need not be a natural person. In the case of banking, trust or insurance corporations at least one director must be a citizen and resident of Antigua and Barbuda of a corporation licensed under this Act to carry on an International Trust Business.

Restricted powers.

62. If the powers of the directors of a corporation to manage the business and affairs of the corporation are in whole or in part restricted by the articles of the corporation, the directors have all the rights, powers and duties of the directors to the extent that the articles do not restrict those powers; but the directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers.

By-law powers.

63. (1) Unless the articles, by-laws or an unanimous shareholder agreement otherwise provide, the directors of a corporation may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the corporation.

(2) The directors of a corporation must submit a by-law, or any amendment or repeal of a by-law, made under subsection (1) to the shareholders of the corporation at the next meeting of shareholders after the making, amendment or repeal of the by-law; and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or any amendment or repeal of a by-law, is effective from the date of the resolution of the directors making, amending or repealing the by-law until

(a) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders pursuant to subsection (2), or

(b) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4);

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2) or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at an annual meeting of shareholders may make a proposal to make, amend or repeal a by-law.

64. (1) At the time of sending articles of incorporation of a corporation to the Director, the incorporators must send him, in the prescribed form, a notice of the names of the directors of the corporation and the name and address of the corporation's resident agent for service of process who must be a resident of Antigua and Barbuda; and the Director must file the notice. **Organisational meeting.**

(2) Each director named in the notice referred to in subsection (1) holds office as a director of the corporation from the issue of the certificate of incorporation of the corporation until the first meeting of the shareholders of the corporation.

(3) After the issue of the certificate of incorporation of a corporation, a meeting of the directors of the corporation must be held at which the directors may

(a) make by-laws;

(b) adopt forms of share certificates and corporate records;

(c) authorise the issue of shares;

(d) appoint officers;

(e) appoint an auditor, if required, to hold office until the first annual meeting of shareholders;

(f) make banking arrangements; and

(g) transact any other business.

(4) An incorporator or a director may call the meeting of directors referred to in subsection (3) by giving by post not less than five days notice of the meeting to each director and stating in the notice the time and place of the meeting.

(5) Subsection (3) does not apply to a corporation to which a certificate of amalgamation has been issued under section 173.

Disqualified directors.

65. (1) When, on the application of the Director, it is made to appear to the court that a person is unfit to be concerned in the management of a corporation, the court may order that, without the prior leave of the court, he may not be a director of the corporation or, in any way, directly or indirectly, be concerned with the management of the corporation for such period

(a) beginning

(i) with the date of the order, or

(ii) if the person is undergoing, or is to undergo, a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison,

and

(b) not exceeding five years,

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the court must have regards to all the circumstances that it considers relevant including any previous convictions of the person in Antigua and Barbuda or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any person, the Director must give that person not less than ten days notice of the Director's intention to make the application.

(4) On the hearing of an application made by the Director under this section or an application for leave under this section to be concerned with the management of a corporation, the Director and any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by counsel.

(5) When a person is disqualified under this section from being a director of a corporation, he may not, during that period of disqualification, be a director of any corporation.

66. Unless the articles of a corporation otherwise provide, a director of the corporation need not hold shares issued by the corporation. **No qualification required.**

67. (1) The shareholders of a corporation must, at the first meeting of the corporation and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the corporation following the election. **Election of directors.**

(2) It is not necessary that all the directors of a corporation elected at a meeting of shareholders hold office for the same term.

(3) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(4) Notwithstanding subsection (2) of section 65 or subsections (1) and (3) of this section, if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(5) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors

required by the articles of the corporation, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.

(6) The articles of a corporation or an unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or officers of the corporation or by any classes of those creditors or officers.

(7) The corporation must send in the prescribed form to the Director a notice of the names of the directors after each election or appointment of directors of the corporation.

Termination of office.

68. A director of a corporation ceases to hold office when

- (a) he dies, resigns or is dissolved,
- (b) he is removed in accordance with section 70; or
- (c) he becomes disqualified under section 65 or 66.

Resignation of director.

69. The resignation of a director of a corporation becomes effective at the time his written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Removal of director.

70. (1) The shareholders of a corporation may, by ordinary resolution at a special meeting, remove any directors from office.

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) A vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if the vacancy is not so filled, it may be filled pursuant to section 72.

71. (1) A director of a corporation is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders. **Right to notice.**

(2) A director

(a) who resigns,

(b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or

(c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal or because his term of office has expired or is about to expire,

may submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) The corporation shall forthwith send a copy of the statement referred to in subsection (2) to the Director and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).

(4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

72. (1) Subject to subsections (3) and (4), a quorum of directors of a corporation may fill a vacancy among the directors of the corporation, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles of the corporation. **Filling vacancy.**

(2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office must forthwith call a special meeting of shareholders to fill the vacancy; and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series, or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy

(4) The articles of a corporation may provide that a vacancy among the directors be filled only

(a) by a vote of the shareholders, or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

Numbers
changed.

73. The shareholders of a corporation may amend the articles of the corporation to increase or to decrease the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of an incumbent director.

Notice of change.

74. (1) Within fifteen days after a change is made among its directors, a corporation must send to the Director a notice in the prescribed form setting out the change; and the Director must file the notice.

(2) Any interested person, or the Director, may apply to the court for an order to require a corporation to comply with subsection (1); and the court may so order and make any further order it thinks fit.

75. (1) The directors of a corporation shall hold the annual meeting of directors within Antigua and Barbuda and unless otherwise provided in the articles or by-laws, any other meeting of directors may be held at any place upon such notice as the by-laws require. **Directors' meetings.**

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors; and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

76. (1) A notice of a meeting of the directors of a corporation must specify any matter referred to in subsection (2) of section 80 that is to be dealt with at the meeting; but, unless the by-laws of the corporation otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting. **Notice and waiver.**

(2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

77. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting. **Adjourned meeting.**

78. Where a corporation has only one director; that director may constitute a meeting. **One director board.**

79. (1) Subject to the by-laws of a corporation, a director may, if all the directors of the corporation consent, participate in a meeting of directors of the corporation or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other. Such a meeting will be deemed to have been held within Antigua and Barbuda so long as at least one director is present in Antigua and Barbuda during the meeting. **Telephone participation.**

(2) A director who participates in a meeting of directors by any means described in subsection (1) is, for the purposes of this Act, present at the meeting.

Delegation of powers.

80. (1) Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a corporation may

(a) submit to the shareholders any question or matter requiring the approval of the shareholders;

(b) fill a vacancy among the directors or in the office of auditor;

(c) issue shares except in the manner and on the terms authorised by the directors;

(d) declare dividends;

(e) purchase, redeem or otherwise acquire shares issued by the corporation;

(f) approve any financial statements referred to in section 142; or

(g) adopt, amend or repeal by-laws.

Validity of acts.

81. An act of a director or officer is valid notwithstanding any irregularity in his election or appointment or any defect in his qualification.

Meeting by resolution.

82. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors,

(a) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors; and

(b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the proceedings of the directors or committee or directors.

LIABILITIES OF DIRECTORS

83. Directors of a corporation who vote for or consent to a resolution authorising the issue of a share under section 30 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

Liability for share issue.

84. Directors of a corporation who vote for or consent to a resolution authorising

Liability for other acts.

(a) a purchase, redemption or other acquisition of shares contrary to section 39, 40, or 41;

(b) a payment of a dividend contrary to section 51 or 52;

(c) financial assistance contrary to section 53;

(d) a payment of an indemnity contrary to any of the provisions of sections 99 to 101; or

(e) a payment to a shareholder contrary to any of the provisions of sections 191 to 200 or 204;

are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation.

85. A director who has satisfied a judgment founded on a liability under section 83 or 84 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Contribution for judgment.

86. (1) A director who is liable under section 84 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 39, 40, 41, 51, 52, 53, 54 or 56.

Recovery by action.

(2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so,

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of sections 39, 40, 41, 51, 52, 53, 54, 56, 99 to 101, 191 to 200 or 204,

(b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares, or

(c) make any further order it thinks fit.

Defence to liability.

87. A director of a corporation is not liable under section 83 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

Time limit on liability.

88. An action to enforce a liability imposed under section 83 or 84 may not be commenced after two years from the date of the resolution authorising the action complained of.

CONTRACTUAL INTERESTS

Interests in contracts.

89. (1) A director or officer of a corporation

(a) who is a party to a material contract or proposed material contract with the corporation, or

(b) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the corporation,

must disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) must be made, in the case of a director of a corporation,

(a) at the meeting at which a proposed contract is first considered;

(b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;

(c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or

(d) if a person who is interested in a contract later becomes a director of the corporation, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) must be made, in the case of an officer of a corporation who is not a director,

(a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors of the corporation;

(b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or

(c) if a person who is interested in a contract later becomes an officer of the corporation, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders of the corporation, a director or officer of the corporation must disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a corporation who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract

(a) is an arrangement by way of security for money loaned to or obligations undertaken by him for the

benefit of the corporation or an affiliate of the corporation;

(b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the corporation or affiliate of the corporation;

(c) is a contract for indemnity or insurance under section 99 to 101;

(d) is a contract with an affiliate of the corporation; or

(e) is a contract other than one referred to in paragraphs (a) to (d);

but, in the case of a contract described in paragraph (e), no resolution is valid unless it is approved by not less than two-thirds of the votes of the shareholders of the corporation to whom notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail.

**Interest
declaration.**

90. For the purposes of section 89, a general notice to the directors of a corporation by a director or an officer of the corporation declaring that he is a director or officer of or has a material interest in another body and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract.

**Avoidance of
nullity.**

91. A material contract between a corporation and one or more of its directors or officers, or between the corporation and another body of which a director or officer of the corporation is a director or officer or in which he has a material interest, is neither void nor voidable

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or a committee of directors that authorised the contract, if the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 89 or section 90, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the corporation at the time it was approved.

92. When a director or officer of a corporation fails to disclose, in accordance with section 89 or 90, his interest in a material contract made by the corporation, the court may, upon the application of the corporation or a shareholder of the corporation, set aside the contract on such terms as the court thinks fit. **Setting aside contract.**

OFFICERS OF THE CORPORATION

93. Subject to the articles or by-laws of a corporation or any unanimous shareholder agreement, **Designation of offices etc.**

(a) the directors of the corporation may designate the offices of the corporation, appoint natural persons of full capacity as officers, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection (2) of section 80;

(b) a director may be appointed to any office of the corporation; and

(c) two or more offices of the corporation may be held by the same person.

BORROWING POWERS OF DIRECTORS

94. (1) Unless the articles or by-laws, or any unanimous shareholder agreement relating to the corporation otherwise provide, the articles of a corporation are presumed to provide that the directors of the corporation may, without authorisation of the shareholders, **Borrowing powers.**

(a) borrow money upon the credit of the corporation;

(b) issue, re-issue, sell or pledge debentures of the corporation;

(c) subject to section 53, give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and

(d) mortgage, charge, pledge, or otherwise create to secure any obligation of the corporation a security interest in all or any property of the corporation that is owned or subsequently acquired by the corporation.

(2) Notwithstanding subsection (2) of section 80 and paragraph (a) of section 93, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a corporation otherwise provide, the directors of the corporation may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the corporation.

(3) For the purposes of this Act "security interest" means any interest in or charge upon any property of a corporation, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the corporation.

DUTY OF DIRECTORS AND OFFICERS

Duty of care.

95. (1) Every director and officer of a corporation in exercising his powers and discharging his duties must

(a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation must comply with this Act and the regulations and with the articles and by-laws of the corporation and any unanimous shareholder agreement relating to the corporation.

(3) Subject to subsection (3) of section 124, no provision in a contract, the articles of a corporation, its by-laws or any resolution, relieves a director or officer of the corporation from the duty to act in accordance with this Act or the regulations, or relieves him from liability for a breach of this Act or the regulations.

Dissenting to resolutions.

96. (1) A director of a corporation who is present at a meeting of the directors or of a committee of directors of the corporation consents to any resolution passed or action taken at that meeting, unless

(a) he requests that his dissent be or his dissent is entered in the minutes of the meeting,

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned, or

(c) he sends his dissent by registered post or delivers it to the registered office of the corporation immediately after the meeting is adjourned.

(2) A director who votes for or consents to a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within seven days after he becomes aware of the resolution, he

(a) causes his dissent to be placed with the minutes of the meeting, or

(b) sends his dissent by registered post or delivers it to the registered office of the corporation.

(4) A director is not liable under section 83, 84 or 95 if he relies in good faith upon

(a) financial statements of the corporation represented to him by an officer of the corporation, or

(b) a report of a solicitor, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

INDEMNITIES

97. (1) Except in respect of an action by or on behalf of a corporation or body corporate to obtain a judgment in its favour, a corporation may indemnify **Indemnifying director, etc.**

(a) a director or officer of the corporation,

(b) a former director or officer of the corporation,

(c) a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and

(d) the legal representative of any of the persons referred to in paragraphs (a) to (c),

against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of that corporation or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified

(a) acted honestly and in good faith with a view to the best interests of the corporation, and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

For derivative actions.

98. A corporation may with the approval of the court indemnify a person referred to in section 97 in respect of an action

(a) by or on behalf of the corporation or body corporate to obtain a judgment in its favour, and

(b) to which he is made a party by reason of being or having been a director or an officer of the corporation or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in subsection (2) of section 97.

Right to indemnity.

99. Notwithstanding anything in section 97 or 98, a person described in section 97 is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

(a) was substantially successful on the merits in his defence of the action or proceeding,

(b) qualified in accordance with the standards set out in section 97 or 98, and

(c) is fairly and reasonably entitled to indemnity.

100. A corporation may purchase and maintain insurance for the benefit of any person referred to in section 95 against any liability incurred by him under paragraph (b) of subsection (1) of section 95 in his capacity as a director or officer of the corporation. **Insurance of directors, etc.**

101. (1) A corporation or person referred to in section 100 may apply to the court for an order approving an indemnity under section 98; and the court may so order and make any further order it thinks fit. **Court approval of indemnity.**

(2) An applicant under subsection (1) must give the Director notice of the application; and the Director may appear and be heard in person or by counsel.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person; and that person may appear and be heard in person or by counsel.

DIVISION E: THE SHAREHOLDERS

MEETINGS

102. The annual meeting of shareholders referred to in section 104 must be held at the place within Antigua and Barbuda provided in the by-laws or, in the absence of any such provision, at the place within Antigua and Barbuda that the directors determine. **Place of meetings.**

103. Any person may serve as a proxy holder for a shareholder at a meeting; provided that if no shareholder is present in person, the resident agent of the corporation must be in attendance as proxy holder for actions taken at the meeting to be valid. **Attendance at meetings.**

104. The directors of a corporation **Calling meetings.**

(a) must call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than

fifteen months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders.

Record date of shareholders.

105. (1) For the purpose of

(a) determining the shareholders of the corporation who are

- (i) entitled to receive payment of a dividend, or
- (ii) entitled to participate in a liquidation distribution,

or

(b) determining the shareholders of the corporation for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for the determination of shareholders; but that record date must not precede by more than fifty days the particular action to be taken.

(2) For the Purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the corporation, the directors of the corporation may fix in advance a date as the record date for the determination of shareholders; but the record date must not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

Statutory date.

106. If no record date is fixed,

(a) the record date for determining the shareholders who are entitled to receive a notice of a meeting of the shareholders is

- (i) the close of business on the date immediately preceding the day on which the notice is given, or
- (ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than the purpose specified in paragraph (a) is the close of business on the day on which the directors pass the resolution relating to that purpose.

107. If a record date is fixed under section 105, notice thereof must, not less than seven days before the date so fixed, be given by advertisement in a newspaper published in Antigua and Barbuda. **Notice of record date.**

108. (1) Notice of the time and place of a meeting of shareholders must be sent not less than twenty-one days nor more than fifty days before the meeting **Notice of meeting.**

(a) to each shareholder entitled to vote at the meeting;

(b) to each director; and

(c) to the auditor of the corporation.

(2) A notice of a meeting of shareholders of a corporation is not required to be sent to shareholders of the corporation who were not registered on the records of the corporation or its transfer agent on the record date determined under section 106 or 107, as the case may be; but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than thirty days it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting must be given as for an original meeting.

109. (1) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders is special business, except **Special business.**

- (a) the consideration of the financial statements,
- (b) the auditor's report,
- (c) the election of directors, and
- (d) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted must state:

(a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

(b) the text of any special resolution to be submitted to the meeting.

Waiver of notice.

110. A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting; and the attendance of any person at a meeting of shareholders is a waiver of notice of the meeting by that person unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

SHAREHOLDER LISTS

List of shareholders.

111. (1) A corporation must,

(a) not later than ten days after the record date is fixed under subsection (2) of section 105, if a record date is so fixed, or

(b) if no record date is fixed,

(i) at the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, as of the day on which the meeting is held,

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a corporation fixes a record date under subsection (2) of section 105, a person named in the list prepared under paragraph (a) of subsection (1) is, subject to subsection (3), entitled, at the meeting to which the list relates, to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a corporation after the record date fixed by the corporation, if the transferee of those shares

(a) produces properly endorsed share certificates to the corporation or otherwise establishes to the corporation that he owns the shares, and

(b) demands, not later than ten days before the meeting of the shareholders of the corporation, that his name be included in the list of shareholders before the meeting,

the transferee may vote his shares at the meeting.

(4) When a corporation does not fix a record date under subsection (2) of section 105, a person named in a list of shareholders prepared under paragraph (b) of subsection (1) may, at the meeting to which the list relates, vote the shares shown opposite his name.

(5) When a corporation has issued bearer shares, the holder of the bearer shares shall be placed on the list of shareholders upon:

(a) deposit of the bearer certificate in escrow with the corporation which escrow shall continue until after the meeting of shareholders, or

(b) upon certification from a banking or trust institution in Antigua and Barbuda that it holds and will continue to hold in escrow certain bearer certificates of the corporation on behalf of a shareholder. Such certification shall include the name and address of the banking or trust institution, the number of shares held and the number identification of the certificate representing said shares.

112. A shareholder of a corporation may examine **Examination of list.**
the list of its shareholders

(a) during usual business hours at the registered office of the corporation or at the place where its register of shareholders is maintained, and

(b) at the meeting of shareholders for which the list was prepared.

QUORUM

Quorum at meetings.

113. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting is present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within thirty minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day two weeks thereafter at the same time and place; and, if at the adjourned meeting, a quorum is not present within thirty minutes of the appointed time, the shareholders present constitute a quorum.

(4) When a corporation has only one shareholder, or has only one shareholder of any class or series of shares, that shareholder present in person or by proxy constitutes a meeting.

VOTING THE SHARES

Right to vote share.

114. (1) Unless the articles of the corporation otherwise provide, on a show of hands a shareholder or proxy holder has one vote; and upon a poll a shareholder or proxy holder has one vote for every share held.

(2) A proxy holder or an alternate proxy holder has the same rights as the shareholder who appointed him

(a) to speak at the meeting of shareholders in respect of any matter,

(b) to vote by way of ballot at the meeting, and

(c) to vote at the meeting in respect of any matter by way of a show of hands, except when a proxy holder or alternate proxy holder has conflicting instructions from more than one shareholder.

115. (1) When a body corporate or association is a shareholder of a corporation, the corporation must recognise any natural person authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation. **Representative of other body.**

(2) A natural person who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were a natural person as well as a shareholder.

116. Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if two or more of those persons who are present, in person or by proxy, vote, they must vote as one on the shares jointly held by them. **Joint shareholders.**

117. Unless the by-laws otherwise provide, voting at a meeting of shareholders must be by a show of hands except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting. **Voting method at meetings.**

118. A shareholder or proxy holder may demand a ballot either before or after any vote by show of hands. **Ballot.**

119. (1) Except where a written statement is submitted by a director under section 71 or an auditor under section 157, **Resolution in writing.**

(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders, and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the meetings of shareholders.

COMPULSORY MEETING

Requisitioned
shareholders
meeting.

120. (1) The holders of not less than five per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders of the corporation, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the corporation.

(3) Upon receiving a requisition referred to in subsection (1), the directors must call a meeting of shareholders to transact the business stated in the requisition, unless

(a) a record date has been fixed under subsection (2) of section 105 and notice thereof has been given under section 107; or

(b) the directors have called a meeting of shareholders and have given notice thereof under section 108.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within twenty-one days after receiving the requisition, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section must be called as early as possible in the manner in which meetings are to be called pursuant to the by-laws and this Division.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation must re-imburse the shareholders who requisitioned the meeting the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

121. (1) Upon the application to the court by a director of a corporation or a shareholder of the corporation who is entitled to vote at a meeting of the shareholders, or by the Director, the court may, Court-called meeting.

(a) when for any reason it is impracticable

(i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or

(ii) to conduct the meeting in the manner prescribed by the by-laws and this Act,

or

(b) for any other reason thought fit by the court, order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a corporation called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

CONTROVERTED AFFAIRS

122. (1) A corporation or a shareholder or director thereof may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation. Court review of controversy.

(2) Upon an application made under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made; and

(d) an order determining the voting rights of shareholders and of persons claiming to own shares.

SHAREHOLDER AGREEMENTS

**Pooling
agreement.**

123. A written agreement between two or more shareholders of a corporation may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement.

**Unanimous
shareholder
agreement.**

124. (1) An otherwise lawful written agreement among all the shareholders of a corporation, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the corporation to manage the business and affairs of the corporation is valid.

(2) A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company; and the directors are thereby relieved of their duties and liabilities to the same extent.

(3) If a person who is the beneficial owner of all the issued shares of a corporation makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the corporation, the declaration constitutes a unanimous shareholder agreement.

(4) Where any unanimous shareholder agreement is executed or terminated in connection with a corporation licensed to conduct international banking, trust or insurance business, written notice of that fact together with a date of the execution or termination thereof must be filed with the Director within fifteen days after the execution or termination.

(5) No director of a corporation licensed to conduct international banking, trust or insurance business shall be relieved of his duties and liabilities to any extent pursuant to subsection (2) with respect to a unanimous shareholder agreement.

SHAREHOLDER APPROVALS

125. (1) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with this section. Extra-ordinary transaction.

(2) A notice of a meeting of shareholders complying with section 108 must be sent in accordance with that section to each shareholder and must

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 191;

but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorise the sale, lease or exchange of the property and may fix or authorise the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.

(5) The shareholders of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote thereon have, by special resolution, approved of the sale, lease or exchange.

(7) The directors of a corporation, if authorised by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.

SHARE REGISTRANTS

Registrant's
duty.

126. (1) Shares of a corporation that are registered in the name of a person, in this Part called a "registrant", or his nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after receipt thereof sends to the beneficial owner

(a) a copy of the notice of the meeting, financial statements and any other documents sent to shareholders by or on behalf of any person for use in connection with the meeting, and

(b) except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant may not vote or appoint a proxy holder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner of the shares.

(3) A registrant must vote or appoint a proxy holder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(4) If requested by a beneficial owner of shares of a corporation, the registrant of those shares must appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

(5) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken at the meeting.

127. Nothing in section 126 gives a registrant the right to vote shares that he is otherwise prohibited from voting. **Governing prohibition.**

DIVISION F: CORPORATE RECORDS

REGISTERED OFFICE

128. (1) A corporation must at all times have a registered office in Antigua and Barbuda. **Registered office.**

(2) The directors of the corporation may change the address of the registered office.

129. (1) At the time of sending articles of incorporation the incorporators must send to the Director, in the prescribed form, notice of the address of the registered office of the corporation; and the Director must file the notice. **Notice of address.**

(2) A corporation shall, within fifteen days of any change of the address of its registered office, send to the Director a notice in the prescribed form of the change, which the Director must file.

REGISTERS AND RECORDS

130. (1) A corporation shall prepare and maintain at its registered office records containing **Records of corporation.**

(a) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto;

(b) minutes of meetings and resolutions of shareholders; and

(c) copies of all notices required by section 67, 74 or 129.

(2) A corporation shall maintain a register of shareholders showing

(a) the name and the latest known address of each person who is a registered shareholder;

(b) a statement of the shares held by each registered shareholder;

(c) the date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder; and

(d) in the case of bearer shares, the total number of bearer shares outstanding, the number identification and date of issue of each bearer certificate.

(3) A corporation that issues debt obligations shall maintain a register of debenture-holders showing

(a) the name and the latest known address of each holder of the debt obligations, herein called a debenture-holder;

(b) the principal of the debt obligations held by each debenture-holder;

(c) the amount or the highest amount of any premium payable on redemption of the debt obligations;

(d) the issue price of the debt obligations and the amount paid up on the issue price;

(e) the date on which the name of each person was entered on the register as a debenture-holder; and

(f) the date on which each person ceased to be a debenture-holder.

(4) A corporation that grants conversion privileges, options, or rights to acquire shares of the corporation shall maintain a register showing the name and the latest known address of each person to whom the privileges, options or rights have been granted and such other particulars in respect thereof as are prescribed.

(5) A corporation may appoint an agent to maintain the registers required by this section to be maintained by the corporation; but the registers must be maintained at the registered office of the corporation or at some other place in Antigua and Barbuda designated by the directors of the corporation.

RECORDS OF TRUSTS

131. (1) Except as provided in this section or the **Trust Notices.** Trust Instrument, notice of a trust, express, implied or constructive, must not

- (a) be entered by a corporation in any of the registers maintained by it pursuant to section 130, or
- (b) be received by the Director.

(2) No liabilities are affected by anything done in pursuance of subsection (3), (4) or (5); and the corporation concerned is not affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased person who was registered in a register of a corporation as a shareholder or debenture-holder may become registered as the holder of the share or debt obligation as personal representative of that estate.

(4) A personal representative of the estate of a deceased person who was beneficially entitled to a share or debt obligation of the corporation that is registered in a register of the corporation may, with the consent of the corporation and of the registered shareholder or debenture holder, become the registered shareholder or debenture holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased person is registered pursuant to subsection (3) or (4) as a holder of a share or debt obligation of a corporation, the personal representative is, in respect of that share or debt obligation, subject to the same liabilities and no more that he would be subject to had the share or debt obligation remained registered in the name of the deceased person.

ACCOUNTS, MINUTES AND OTHER RECORDS

Other records.

132. (1) In addition to the records described in section 130, a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

(2) In the case of a banking, trust or insurance corporation, the records required under subsection (1) shall be kept at the registered office of the corporation or at some other place in Antigua and Barbuda designated by the directors; and those records must at all reasonable times be available for inspection by the directors.

(3) When any accounting records of a corporation, referred to in subsection (2), are kept outside Antigua and Barbuda, such accounting records as are adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis must be kept by the corporation at the registered office of the corporation or at some other place in Antigua and Barbuda designated by the directors.

(4) For the purposes of paragraph (b) of subsection (1) of section 130 and of this section, when an existing off-shore company is continued under this Act, "records" includes similar registers and other records required by law to be maintained by that company before it was continued under this Act.

FORM OF RECORDS

Records form.

133. All records required by this Act to be prepared and maintained

(a) may be in a bound or loose-leaf form or in a photographic film form, or

(b) may be entered or recorded

(i) by any system of mechanical or electronic data processing, or

(ii) by any other information storage device

that is capable of reproducing any required information in intelligible written form within a reasonable time.

CARE OF RECORDS

134. A corporation and its agents shall take reasonable precautions **Duty of care for records.**

- (a) to prevent loss or destruction of,
- (b) to prevent falsification of entries in, and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained in respect of the corporation.

ACCESS TO RECORDS

135. (1) The directors and shareholders of a corporation and their agents and legal representative may, during the usual business hours of the corporation, examine the records of the corporation referred to in section 130 and may take extracts therefrom free of charge. **Access to records.**

(2) A shareholder of a corporation is, upon request and without charge, entitled to one copy of the articles and by-laws of the corporation and any unanimous shareholder agreement, and to one copy of any amendments to any of those documents.

(3) The creditors of a corporation and their agents and legal representatives may, during the usual business hours of the corporation and upon payment of a reasonable fee, examine the records referred to in paragraphs (a) and (c) of subsection (1) of section 130 and subsections (3) and (4) of that section, other than any unanimous shareholder agreement or an amendment to any unanimous shareholder agreement, and make copies of those records or take extracts therefrom.

DIVISION G: TRANSFER OF SECURITIES

Transferring securities.

136. (1) The securities of a corporation may be transferred by a written instrument of transfer signed by the transferor and naming the transferee. The transfer of a bearer certificate of the corporation shall be effected by delivery of the certificate.

(2) Where an instrument of transfer is prescribed in the by-laws of a corporation, that instrument must be used to transfer the securities of the corporation.

(3) Subject to subsection (2), no particular form of words are necessary to transfer securities, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the securities in the transferee.

(4) Subject to subsection (5) and to any other Act, the beneficial ownership of the securities of a corporation passes to a transferee

(a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor's certificate, or

(b) on the delivery to him of an instrument of transfer signed by the transferor that has been certified by or on behalf of the corporation.

(5) If the transferor concerned is not registered with the corporation in respect of the securities, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by the person so registered and all holders of the securities intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a corporation and in the case of debt obligations the trustee of the covering trust deed are not bound or entitled to treat the transferee of securities as the owner of them until the transfer to him has been registered or until the court orders the registration of the transfer to him; and until the transfer is presented to the corporation for registration, the corpora-

tion is not to be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.

(7) This section applies notwithstanding anything contained in the articles or by-laws of a corporation and notwithstanding anything contained in any trust deed or debt obligation or any contract or instrument.

137. (1) No restriction or condition in a trust deed covering a debt obligation of a corporation, or in the debt obligation, limits the right of any person to transfer the obligation held by him. **Restrictions on transfers.**

(2) A transfer of the securities of a corporation made by

(a) the personal representative of the holder of the securities,

(b) a trustee in bankruptcy,

(c) a receiver appointed by or for the benefit of the holders of any debt obligations,

(d) a receiver or other person appointed by the court to administer the estate of a person of unsound mind,

(e) the guardian of a minor, or

(f) a person appointed by the court to execute the transfer,

is, although the person executing the transfer is not himself registered with the corporation as the holder of the securities, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(3) This section applies in respect of a corporation notwithstanding anything contained in the articles or by-laws of the corporation, and notwithstanding anything contained in any trust deed or debt obligations or any contract or instrument relating to the securities of the corporation.

138. (1) A corporation must certify a transfer of security of the corporation on the presentation to it of a **Duty to certify.**

transfer that is signed by the holder of the security and accompanied with delivery to the corporation of the security.

(2) The certification consists of a statement signed on behalf of the corporation and written or endorsed on the transfer to the effect that the security has been delivered to or lodged with the corporation.

(3) The certification by a corporation of any transfer of a security of the corporation

(a) is a representation by the corporation to any person acting on the faith of the certification that there have been produced to the corporation such documents as on the face of them show a prima facie title to the security in the transferor named in the transfer, but

(b) is not a representation that the transferor has any title to the security.

(4) Where any person acts on the faith of a false certification by a corporation made fraudulently or negligently, the corporation is liable to compensate him for any loss he incurs in consequence of his so acting.

(5) A corporation that has certified a transfer of a security of the corporation is liable to compensate any person for loss that he incurs in consequence of the corporation subsequently releasing, otherwise than on surrender of the certification of the transfer of the security, possession of the security in respect of which the certification was issued.

(6) For the purposes of this section,

(a) a transfer is deemed to be certified by a corporation if

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the corporation's behalf, and

(ii) the certification is signed by a person authorised to issue certifications of transfers on the corporation's behalf, or by any other officer or employee either of the corporation or of a body corporate so authorised;

and

(b) a certification is deemed to be signed by a person if it purports to be authenticated by his signature or initials, whether handwritten or not, unless the signature or initials were placed on the certification neither by that person nor any person authorised to use the signature or initials for the purpose of issuing certifications of transfers on the corporation's behalf.

139. (1) A corporation must, within five weeks after the allotment of any of its securities, and within two months after the date on which a transfer of any of its securities is presented to the corporation for registration, complete the security and have it ready for delivery to the allottee or transferee. **Security certificate.**

(2) When a corporation on which a notice is served requiring the corporation to make good any default in complying with subsection (1) fails to make good the default within seven days after the service of the notice, the court may, on the application of the person entitled to have the security delivered to him, make an order directing the corporation and any officer of the corporation to make good the default within such time as may be specified in the order; and the order may provide that all costs incidental to the application be borne by the corporation and any officer of the corporation responsible for the default.

(3) For the purposes of this section "transfer" means a transfer in proper form duly signed by the transferor and transferee and otherwise valid, and does not include a transfer that the corporation is for any reason entitled to refuse to register and does not register.

140. (1) Notwithstanding anything in the articles or by-laws of a corporation or in any debt obligations, trust deed or other contract or instrument, the corporation shall not register a transfer of any security of the corporation unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the corporation; but nothing in this section affects any duty of the corporation to register as the holder of a security of the corporation any **Registration.**

person to whom the ownership of any such security has been transmitted by operation of law.

(2) On the application of the transferor of any security of a corporation, other than a bearer security, the corporation must enter in its register of shareholders or debenture-holders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(3) Notwithstanding anything in the articles or by-laws of a corporation or in any debt obligation, trust deed or other contract or instrument, a corporation must register the trustee in bankruptcy or the personal representative of a holder of a security of the corporation as holder of the security of the bankrupt or, as the case requires, the deceased person, in its register of shareholders or debenture-holders, within seven days after he produces to the corporation satisfactory evidence of his title and requests it to register him as the holder of the security.

Effect of
certificate.

141. (1) A certificate issued by a corporation and signed on its behalf stating that any securities of the corporation are held by any person is *prima facie* proof of the title of that person to the securities.

(2) The registration of a person as a shareholder or debenture-holder of a corporation, or the issue of a security to him, constitutes a representation by the corporation that the person so registered, or the person named in the security as entitled to the shares or debt obligations mentioned therein, is entitled to the securities mentioned in the register or in the security; and the corporation may not deny the truth of that representation as against a person who believes it to be true and contracts to acquire the security or any interest therein in good faith and for money or money's worth.

(3) It is no defence for a corporation to show for the purposes of subsection (2) that a registration or the issue of a security or other document was procured by fraud or by the presentation to it of a forged document.

(4) Subsections (2) and (3) do not apply in respect of securities or instruments issued by an existing off-shore company before the commencement of this Act.

DIVISION H: FINANCIAL REPORTS BY CORPORATIONS

COMPARATIVE FINANCIAL STATEMENTS

142. (1) Subject to this section and to section 143, the directors of a corporation if required by the articles of incorporation or by-laws must place before the shareholders at every annual meeting of the shareholders of the corporation:

Annual financial returns.

(a) comparative financial statements, as prescribed, relating separately to

(i) the period that began on the date the corporation came into existence and ended not more than twelve months after that date, or, if the corporation has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than twelve months after the beginning of that period, and

(ii) the immediately preceding financial year;

(b) the report of the auditor, if any; and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles of the corporation, its by-laws, or any unanimous shareholder agreement.

(2) The financial statements required by subparagraph (ii) of paragraph (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

(3) The Director may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.

Exemption for information.

143. Upon the application of a corporation for authorisation to omit from its financial statements any prescribed item, or to dispense with the publication of any particular prescribed financial statement, the Director may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the corporation, permit its omission on such reasonable conditions as he thinks fit.

Consolidated financial returns.

144. (1) A corporation must keep at its registered office a copy of the financial statements of each of its subsidiaries whose accounts are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may, upon request therefor, examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts from those statements, free of charge.

(3) A corporation may, within fifteen days of a request to examine statements under subsection (2), apply to the court for an order barring the right of any person to examine those statements; and the court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order the court thinks fit.

(4) A corporation must give the Director and the person asking to examine statements under subsection (2) notice of any application under subsection (3); and the Director and that person may appear and be heard in person or by counsel.

Approval of directors.

145. (1) The directors of a corporation must approve the financial statements referred to in section 142, and the approval must be evidenced by the signature of one or more directors.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 142 unless the financial statements are

(a) approved and signed in accordance with subsection (1), and

(b) accompanied with a report of the auditor of the corporation, if any.

146. Not less than twenty-one days before each annual meeting of the shareholders of a corporation or before the signing of a resolution under paragraph (b) of subsection (1) of section 119 in lieu of its annual meeting, the corporation must send a copy of the documents referred to in section 142 to each shareholder, except to a shareholder who has informed the corporation in writing that he does not want a copy of those documents.

Copies to
shareholders.

AUDITOR OF THE CORPORATION

147. Subject to section 148, only a natural person who is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Director as a reputable accounting body is eligible for appointment as an auditor of a corporation.

Auditor's
qualifications.

148. (1) Subject to subsection (6), a person is not eligible to be an auditor of a corporation if he is not independent of the corporation, its affiliates, and of the directors and officers of the corporation and its affiliates.

Disqualifying
auditor.

(2) For the purposes of this section, whether or not an individual is independent is a question of fact to be determined having regard to all the circumstances.

(3) A person is presumed not to be independent of a corporation if he or his business partner

(a) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or a business partner of any director, officer or employee or any such corporation or its affiliates,

(b) beneficially owns or controls, directly or indirectly, a material interest in the securities of the corporation or any of its affiliates, or

(c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of his proposed appointment as auditor of the corporation.

(4) An auditor who becomes disqualified under this section must, subject to subsection (6), resign forthwith after he becomes aware of his disqualification.

(5) An interested person may apply to a court for an order declaring an auditor disqualified under this section and the office of auditor vacant.

(6) An interested person may apply to the court for an order exempting an auditor from disqualification under this section; and the court may, if it is satisfied that an exemption would not adversely affect the shareholders, make an exemption order on such terms as it thinks fit; and the order may be given retroactive effect.

Appointment of auditor.

149. (1) Subject to section 150, the shareholders of a corporation must, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 64 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, it may be fixed by the directors.

Dispensing with auditor.

150. (1) The shareholders of a corporation may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

(4) This section does not apply to a corporation that carries on an international banking, trust or insurance business.

152. (1) An auditor of a corporation ceases to hold office when **Cessation of office.**

(a) he dies or resigns, or

(b) he is removed pursuant to section 152.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is the later date.

153. (1) The shareholders of a corporation may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 154. **Removal of auditor.**

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if the vacancy is not so filled, it may be filled under section 153.

154. (1) Subject to subsection (3), the directors must forthwith fill a vacancy in the office of auditor. **Filling auditor vacancy.**

(2) If there is not a quorum of directors, the directors then in office must, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a corporation may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

Court appointed auditor.

154. (1) If a corporation does not have an auditor, the court may, upon the application of a shareholder or the Director, appoint and fix the remuneration of an auditor; and the auditor holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 150 not to appoint an auditor.

Auditor rights to notice.

155. The auditor of a corporation is entitled to receive notice of every meeting of the shareholders of the corporation and, at the expense of the corporation, to attend and be heard at the meeting on matters relating to his duties as auditor.

Required attendance.

156. (1) If a shareholder of a corporation, whether or not he is entitled to vote at the meeting, or a director of a corporation, gives written notice to the auditor of the corporation, not less than ten days before a meeting of the shareholders of the corporation, to attend the meeting, the auditor shall attend the meeting at the expense of the corporation and answer questions relating to his duties as auditor or former auditor of the corporation.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the corporation.

(3) Subsection (1) applies *mutatis mutandis* to any former auditor of the corporation.

Right to comment.

157. (1) An auditor who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether

because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 149 is to be proposed,

may submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the corporation must forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 152 and to the Director.

(3) No person may accept appointment, consent to be appointed or be appointed as auditor of a corporation if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until that person has requested and received from the former auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(4) Notwithstanding subsection (3), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within fifteen days after making the request referred to in that subsection, he does not receive a reply to it.

158. (1) An auditor of a corporation must make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 142. **Examination by auditor.**

(2) Notwithstanding section 159, an auditor of a corporation may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purposes of subsection (2) reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form.

(5) The present or former directors, officers, employees or agents of a corporation must, upon the demand of the auditor of the corporation, furnish to the auditor

(a) such information and explanations, and

(b) such access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under subsection (1) and that the directors, officers, employees or agents are reasonably able to furnish.

(6) Upon the demand of an auditor of a corporation, the directors of the corporation must

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the corporation the information and explanations that the directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under subsection (1), and

(b) furnish the information and explanations so obtained to the auditor.

Detected error.

159. (1) A director or an officer of a corporation shall forthwith notify the corporation's auditor of any error or mis-statement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor of the corporation has reported upon.

(2) When the auditor or a former auditor of a corporation is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the corporation and, in his opinion, the error or mis-statement

is material, he shall inform each director of the corporation accordingly.

(3) When under subsection (2) the auditor or a former auditor of a corporation informs the directors of an error or mis-statement in a financial statement of the corporation, the directors shall

(a) prepare and issue revised financial statements,
or

(b) otherwise inform the shareholders of the error or mis-statement.

160. An auditor is not liable to any person in an action for defamation based on any act done or not done or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act. **Privilege of auditor.**

DIVISION I: FUNDAMENTAL CHANGES

ALTERING ARTICLES

161. (1) Subject to sections 162 and 163, the articles of a corporation may, by special resolution, be amended: **Fundamental amendment to articles.**

(a) to change its name;

(b) to add, change or remove any restriction upon the business that the corporation can carry on;

(c) to change any maximum number of shares that the corporation is authorised to issue;

(d) to create new classes of shares;

(e) to change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;

(f) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;

(g) to divide a class of shares, whether issued or unissued, into a series of shares and ~~fix~~ the number of shares in each series and the rights, privileges, restrictions and conditions attached thereto;

(h) to authorise the directors to divide any class of unissued shares into series of shares and ~~fix~~ the number of shares in each series and the rights, privileges, restrictions and conditions attached thereto;

(i) to authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(j) to revoke, diminish or enlarge any authority conferred under paragraphs (h) to (i);

(k) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to section 73;

(l) to add, change or remove restrictions on the transfer of shares;

(m) to apply for continuance as a body corporate in another country and to cease to be a corporation under this Act or to apply for authority to do so at the option of a designated trustee; or

(n) to add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon without further approval of the shareholders.

(3) A provision in the articles of a corporation that restricts in whole or in part the powers of the directors to manage the business and affairs of the corporation may not be amended except with the consent of all the shareholders.

Proposal to
amend articles.

162. (1) Subject to subsection (2), a director or a shareholder of a corporation who is entitled to vote at an annual meeting of shareholders may make a proposal to amend the articles of the corporation.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered must set out the proposed amendment and, if applicable, must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 191; but failure to make that statement does not invalidate an amendment to the articles.

163. (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the articles otherwise provide in the case of an amendment described in paragraph (a) or (b), entitled to vote separately, as a class or series, upon a resolution to amend the articles

Class vote on proposal.

(a) to increase or decrease any maximum number of authorised shares of that class, or increase any maximum number of authorised shares of a class having rights or privileges equal or superior to the shares of that class;

(b) to effect an exchange, reclassification or cancellation of all or part of the shares of that class;

(c) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, in particular, without limiting the generality of the foregoing,

(i) to remove or change prejudicially rights to accrued dividends or to cumulative dividends;

(ii) to add, remove or change redemption rights prejudicially;

(iii) to reduce or remove a dividend preference or a liquidation preference, or

(iv) to add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire shares or debentures of a corporation, or sinking fund provisions;

(d) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;

(e) to create a new class of shares equal or superior to the shares of that class;

(f) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to shares of that class;

(g) to effect an exchange or to create a right of exchange of all or part of the shares of another class into the shares of that class.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the amendment by a special resolution.

Delivery of articles.

164. (1) Subject to any revocation under subsection (2) of section 161, after an amendment has been adopted under section 161, 162, or 163, articles of amendment in the prescribed form must be sent to the Director.

(2) If an amendment effects or requires a reduction of stated capital, subsections (3) and (4) of section 44 apply.

Certificate of amendment.

165. (1) Upon receipt of articles of amendment from a corporation, the Director must issue to the corporation a certificate of amendment in accordance with section 327.

(2) An amendment to the articles of a corporation becomes effective on the date shown in the certificate issued by the Director in respect of that corporation; and the articles of the corporation are amended accordingly.

(3) No amendment to the articles affects

(a) an existing cause of action or claim or liability to prosecution in favour of or against the corporation or its directors or officers, or

(b) any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

166. (1) The directors of a corporation may at any time, and must, when reasonably so directed by the Director, re-state the articles of incorporation of the corporation as amended. **Re-stated articles.**

(2) Re-stated articles of incorporation in the prescribed form must be sent to the Director.

(3) Upon receipt of re-stated articles of incorporation, the Director must issue a re-stated certificate of incorporation in accordance with section 327.

(4) Re-stated articles of incorporation are effective on the date shown in the re-stated certificate of incorporation and supersede the original articles of incorporation and all amendments thereto.

AMALGAMATIONS

167. Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation. **Amalgamation.**

168. (1) Each corporation proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, without limiting the generality of the foregoing, setting out: **Agreement for amalgamation.**

(a) the provisions that are required to be included in articles of incorporation under section 6;

(b) the name and address of each proposed director of the amalgamated corporation;

(c) the manner in which the shares of each amalgamating corporation are to be converted into securities of the amalgamated corporation:

(d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive instead of securities of the amalgamated corporation;

(e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation;

(f) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed by-laws; and

(g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreements must provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect thereof; and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

Approval by
shareholders.

169. (1) The directors of each amalgamating corporation must submit the amalgamation agreement for approval to a meeting of the shareholders of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of shares of that amalgamating corporation.

(2) A notice of a meeting of shareholders complying with section 108 must be sent in accordance with that section to each shareholder of each amalgamating corporation; and the notice

(a) must include or be accompanied with a copy or summary of the amalgamation agreement; and

(b) must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 191;

but failure to make the statement referred to in paragraph (b) does not invalidate an amalgamation.

(3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not the share otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 163.

(5) An amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolutions of each class or series of the shareholders entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement can be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations.

170. A holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with sections 161 and 169, if

Vertical short-form amalgamation.

(a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and

(b) the resolutions provide that

(i) the shares of each amalgamating subsidiary corporation will be cancelled without any repayment of capital in respect of the cancellation;

- (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding corporation; and
- (iii) no securities will be issued by the amalgamated corporation in connection with the amalgamation.

Horizontal short-form amalgamation.

171. Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 168 and 169, if

(a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and

(b) the resolutions provide that

- (i) the shares of all but one of the amalgamating subsidiary corporations will be cancelled without any repayment of capital in respect of the cancellation;
- (ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled; and
- (iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

Articles of amalgamation.

172. (1) Subject to subsection (6) of section 169, after an amalgamation has been adopted under section 169 or approved under section 170 or 171, articles of amalgamation in the prescribed form must be sent to the Director together with the documents required by sections 67 and 129.

(2) There must be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Director

(a) that there are reasonable grounds for believing that

- (i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due; and
- (ii) the realisable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes;

and

(b) that there are reasonable grounds for believing that

- (i) no creditor will be prejudiced by the amalgamation, or
- (ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given to creditors by a corporation, if

(a) a notice in writing is sent to each known creditor having a claim against the corporation that exceeds one thousand dollars;

(b) a notice is published once in a newspaper published or distributed in Antigua and Barbuda; and

(c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act and that a creditor of the corporation can object to the amalgamation within thirty days from the date of the notice.

173. (1) Upon receipt of articles of amalgamation, ~~the Director~~ ^{Certificate of Amalgamation.} must issue a certificate of amalgamation.

(2) On the date shown in a certificate of amalgamation, in respect of an amalgamated corporation,

(a) the amalgamation of the amalgamating corporations and their continuance as one corporation becomes effective;

(b) the property of each amalgamating corporation becomes the property of the amalgamated corporation; and

(c) the amalgamated corporation becomes liable for the obligations of each amalgamating corporation.

RE-ORGANISATION

Re-organisation.

174. (1) In this section, “re-organisation” means

(a) a court order made under section 204;

(b) a court order approving a proposal for re-organisation under section 288: or

(c) a court order that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 161.

(3) If the court makes an order referred to in subsection (1), the court may also

(a) authorise the issue of debentures of the corporation, whether or not convertible into shares of any class or series or having attached any rights or options to acquire shares of any class or series, and fix the terms thereof; and

(b) appoint directors in place or in addition to all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of re-organisation in the prescribed form must be sent by the corporation to the Director together with the documents required by sections 67 and 129, if applicable.

(5) Upon receipt of articles of re-organisation for a corporation, the Director must issue a certificate of amendment in accordance with section 327.

(6) A re-organisation of a corporation becomes effective on the date shown in the certificate of amendment and its articles of incorporation are amended accordingly.

(7) A shareholder of a corporation is not entitled to dissent under section 191 if an amendment to the articles of incorporation of the corporation is effected under this section.

ARRANGEMENTS

175. (1) In this section, “arrangements” includes **Arrangements.**

(a) an amendment of the articles of a corporation;

(b) an amalgamation of two or more corporations;

(c) a division of the businesses carried on by a corporation;

(d) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;

(e) an exchange of securities held by security holders of the corporation for property, money or other securities of the corporation, or property, money or securities of another body corporate;

(f) a liquidation and dissolution of a corporation;
and

(g) any combination of the activities described in paragraphs (a) to (f).

(2) For the purposes of this section a corporation is insolvent when

(a) it is unable to pay its liabilities as they become due, or

(b) the realisable value of the assets of the corporation are less than the aggregate of its liabilities and stated capital of all classes.

(3) Where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to the court for an approval of an arrangement proposed by the corporation.

(4) In connection with an application under this section, the court may make in any interim or final order it thinks fit,

(a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Registrar;

(b) an order requiring a corporation, in such manner as the court directs, to call, hold and conduct a meeting of shareholders or debenture holders or holders of options or rights to acquire shares in the corporation;

(c) an order permitting a shareholder to dissent under section 191; or

(d) an order approving an arrangement as proposed by the corporation or as amended in such manner as the court may direct.

(5) An applicant under this section must give the Director notice of the application; and the Director may appear and be heard in person or by counsel.

(6) After an order referred to in paragraph (6) of subsection (4) has been made, articles of arrangement in the prescribed form must be sent to the Director together with the documents required by sections 74 and 129, if applicable.

EXISTING OFF-SHORE COMPANIES

Continuation as corporation.

176. (1) Subject to subsection (2), an existing off-shore company must, within one year after the commencement of this Act or any extended period granted under section 177, apply to the Director, by articles of continuance in the prescribed form, set out in Schedule II, for a certificate of continuance under this Act.

(2) An existing off-shore company

(a) that carries on an international banking, trust or insurance business, or

(b) that contains the word "bank", "banking" or any word or phrase suggesting that it is a bank or banking institution,

must, within six months after the commencement of this Act or within any extended period granted under section 177, apply under subsection (1) for continuance as a corporation under this Act, unless within that period its corporate objects have been altered to exclude therefrom the carrying on of any international trade or business.

(3) For the purposes of this Act, an existing off-shore company is a body corporate incorporated under the existing Act before the commencement of this Act whose objects or primary objects were or include the carrying on of an international trade or business from within or outside Antigua and Barbuda.

177. (1) In any case of hardship the court may, upon the application of an existing off-shore company made within the period prescribed under section 176 for it to apply for a certificate of continuance, extend the period under section 176 for a period not exceeding one year; and the court may if it thinks fit give directions regarding any changes necessary in the articles of continuance to remove any oppressive or unfairly adverse effect upon any shareholder or creditor of the existing off-shore company resulting from the company's continuance as a corporation under this Act. **Extended period.**

(2) Notice of an application under subsection (1) must be given to the Director and he may appear and be heard on the application in person or by counsel.

178. Within the period referred to in section 176 any amendments to or replacement of the corporate instruments of an existing off-shore company must be made as nearly as possible in accordance with this Act except an amendment made to alter its objects in the manner described in subsection (2) of section 176. **Amending instrument.**

**Articles of
continuance.**

179. (1) Articles of continuance may, without so stating in the articles, effect any amendments to the corporate instruments of an existing off-shore company if the amendment is an amendment that a corporation incorporated under this Act can make in its articles.

(2) Articles of continuance must be accompanied with the documents required by sections 67 and 129.

(3) A shareholder or member of an off-shore company may not dissent under section 191 in respect of an amendment made under subsection (1).

**Certificate of
continuance.**

180. Upon receipt of articles of continuance under section 176, the Director may, and, if the applicant complies with all reasonable requirements of the Director to have the proposed continued corporation accord with the requirements of this Act, the Director must, in accordance with section 327, issue a certificate of continuance of the existing off-shore company as a corporation continued under this Act.

**Non-continuance
effect.**

181. When an existing off-shore company does not, within the period prescribed therefor under section 176, or as extended under section 177 in respect of the company, apply to the Director for a certificate of continuance for the company by an application that is sufficiently proper for the Director to give effect to it, the off-shore company is dissolved upon the expiration of the period prescribed for its continuance under section 176 or as extended under section 177.

CORPORATE MOBILITY

**Continuing
imported
corporations.**

182. (1) A body corporate in another country may, by articles of continuance in the prescribed form, set out in Schedule II, apply to the Director for a certificate of continuance under this Act.

(2) Articles of continuance may, without so stating in the articles, effect any amendments to the corporate instruments of the body corporate that applies for continuance under subsection (1), if the amendment

(a) is not permitted under the law applicable to the body corporate before continuance under this Act; and

(b) is an amendment a corporation incorporated under this Act can make to its articles.

(3) Articles of continuance must be accompanied with the documents required by sections 67 and 129.

183. (1) Upon receipt of articles of continuance, in respect of a body corporate from another country under section 182, the Director may issue a certificate of continuance in accordance with section 327. **Certificate of continuance.**

(2) On the date that the body corporate is continued as a corporation under this Act

(a) the body corporate becomes a corporation to which this Act applies to the like extent as if it had been incorporated under this Act;

(b) the articles of continuance are the articles of incorporation of the continued corporation; and

(c) except for the purposes of subsection (1) of section 64, the certificate of continuance is the certificate of incorporation of the corporation.

184. Subject to section 185, a corporation may, if it is authorised to do so under this section by the shareholders, apply to the appropriate official or public body of that other country requesting that the corporation be continued in that other country as if it had been incorporated under the laws of that country. **Application for continuance.**

185. A corporation may not be continued as a body corporate under the laws of another country unless those laws provide in effect that **Conditions precedent.**

(a) the rights, assets and property of the corporation continue to be the property of the body corporate after discontinuance under this Act;

(b) the body corporate continues to be liable for the obligations of the corporation after discontinuance under this Act;

(c) existing causes of action, claims and any liability to prosecution are not affected by the continuance under the laws of that other country;

(d) a civil, criminal or administrative action or proceeding pending by or against the corporation can be continued to be prosecuted by or against the body corporate after its discontinuance under this Act; and

(e) a conviction against, or ruling, order or judgment in favour of or against, the corporation at the time of continuance can be enforced by or against the body corporate after its discontinuance under this Act.

Import option.

186. (1) A body corporate of another country that has applied and been approved for continuance as a corporation under this Act may, upon payment of the annual fee for the kind of international trade or business it intends to carry on from within Antigua and Barbuda, request the Director to hold up the continuance of the body corporate under this Act until a trustee designated by the body corporate notifies the Director that the body corporate wishes to be continued under this Act.

(2) A registration under subsection (1) may be held for a period of one year from the date of its registration under that section after which period the application for continuance expires unless renewed for a further period of one year upon payment of the registration fee.

(3) After three renewals of an application for continuance under subsection (1), the body corporate must make a new application under section 182.

(4) The instrument designating a trustee for the purposes of subsection (1) must set out the manner in which the trustee intends to notify the Director that the body corporate wishes to be continued under this Act and when notified in accordance with that instrument the Director must issue a certificate of continuance of the body corporate as a corporation continued under this Act with effect from the day notice is received.

(5) When, after a body corporate has been continued as a corporation under this section, the authorities of the country from which the body corporate made application for continuance under this Act request the Director to make an investigation of the corporation and any of its affiliates in accordance with Division B of Part V, the Director must exercise his powers under that Division on behalf of the authorities of that other country, subject to subsection (6).

(6) When the Director believes that a request under subsection (5) is made without good cause, he may apply to the court for directions regarding the exercise of his duty under subsection (5).

(7) A notification from a designated trustee pursuant to this section is conclusive proof of the fact of notification and its date and that it was done in accordance with the instrument of trust under which the trustee was designated.

187. (1) Where a corporation has made an application under section 184 to the appropriate authorities of another country for continuance as a body corporate of that other country and has applied to have the application registered and held up until a designated trustee notifies the authorities of that other country that the corporation has ceased to be a corporation under this Act, the corporation may register that application and the instrument under which the trustee is designated with the Director; and, upon the payment of a registration fee in the amount prescribed under section 186 for registration under that section, the Director must register and stay the registration of the application to cease to be a corporation under this Act until the option is exercised. **Export option.**

(2) When the designated trustee notifies the authorities in the other country in accordance with the instrument of trust that the corporation has ceased to be a corporation under this Act, the corporation ceases to be a corporation under this Act with effect from the day immediately preceding the day that the trustee notified the authorities in that other country.

(3) The notification of the designated trustee given pursuant to subsection (2) is, for the purposes of section 327, articles that conform to law.

EFFECT OF CONTINUATION

Preservation of rights.

188. When a body corporate is continued as a corporation under section 180, 183 or 186,

(a) the rights, assets and property of the body corporate continue as the rights, assets and property of the corporation;

(b) the corporation continues to be liable for the obligations of the body corporate;

(c) existing causes of action, claims and any liability to prosecution are not affected;

(d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued to be prosecuted by or against the corporation; and

(e) a conviction against or ruling, order or judgment in favour of or against the body corporate existing at the time of continuance may be enforced by or against the corporation

Various shares.

189. (1) A share of a continued corporation issued before it was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid and irrespective of any designation rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share; and continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the corporation, nor does it relieve him of any liability in respect of an issued share of the corporation.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 35.

190. (1) Upon receipt of notice satisfactory to him ~~that~~ **continuance.** that a corporation that has made an application under section 184 has been continued as a body corporate of the other country, the Director must file the notice and issue a certificate of discontinuance in accordance with section 327.

(2) On the date shown in the certificate of discontinuance of a corporation, this Act ceases to apply to the corporation as such.

(3) The notice described in subsection (1) is, for the purposes of section 327, articles that conform to law.

DISSENTERS' RIGHTS AND OBLIGATIONS

191. (1) Subject to sections 174 and 204, a **Dissent by shareholder.** shareholder of any class of shares of a corporation may dissent if the corporation resolves

(a) to amend its articles under section 168 to add, change or remove any restriction upon the international trades or businesses that the corporation can carry on;

(b) to amalgamate with another corporation, otherwise than under section 174 or 175; or

(c) to sell, lease or exchange all or substantially all its property under section 125.

(2) Subject to sections 174 and 204, a shareholder of any class of shares of a corporation may dissent if the corporation is subject to an order of the court under section 177 permitting the shareholders to dissent.

(3) The articles of a corporation may provide that a shareholder of any class or series of shares who is entitled to vote under section 163 may dissent if the corporation resolves to amend its articles in a manner described in that section.

(4) In addition to any other right he has, but subject to section 175, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents or an order made under section 175 becomes effective, to be paid by the corporation the fair value

of the shares held by him in respect of which he dissents; and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class or series.

(6) A dissenting shareholder must send to the corporation, at or before any meeting of shareholders of the corporation at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the corporation did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(7) When a shareholder of a corporation has dissented pursuant to subsection (6) to a resolution referred to in subsection (1) or (3), the corporation must, within ten days after the shareholders of the corporation adopt the resolution, send to the shareholder notice that the resolution has been adopted; but the notice need not be sent to the shareholder if he has voted for the resolution or has withdrawn his dissent.

**Demand for
payment.**

192. (1) A dissenting shareholder must, within twenty days after he receives a notice under subsection (7) of section 191 or, if he does not receive that notice, within twenty days after he learns that a resolution under that section has been adopted, send to the corporation a written notice containing

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

(2) A dissenting shareholder must, within thirty days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the corporation or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has no right to make a claim under this section.

(4) A corporation or its transfer agent must endorse on any share certificate received by it under subsection (2) a notice that the holder of the share is a dissenting shareholder under this section and forthwith return the share certificate to the dissenting shareholder.

193. After sending a notice under section 192, a dissenting shareholder ceases to have any rights as a shareholder, other than the right to be paid the fair value of his shares as determined under this section unless ^{Suspension of rights.}

(a) the dissenting shareholder withdraws his notice before the corporation makes an offer under section 194;

(b) the corporation fails to make an offer in accordance with section 194 and the dissenting shareholder withdraws his notice; or

(c) the directors, as the circumstances require,

(i) revoke the resolution to amend the articles of the corporation;

(ii) under subsection (6) of section 169, terminate the amalgamation agreement; or

(iii) under subsection (7) of section 125, abandon the sale, lease or exchange of property;

in which case his rights as a shareholder are reinstated as of the date the notice mentioned in section 192 was sent.

194. (1) A corporation must, not later than seven days after the day on which the action approved by the resolution is effective or the day the corporation received the notice referred to in section 192, whichever is the later date, send to each dissenting shareholder who has sent such a notice ^{Offer to pay for share.}

(a) a written offer to pay for his shares in an amount considered by the directors of the corporation to be the fair value of those shares, which must be accompanied with a statement showing how the fair value was determined; or

(b) if subsection (3) of section 199 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) Every offer made under subsection (1) for shares of the same class or series must be on the same terms.

(3) Subject to section 196, a corporation must pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (1) has been accepted; but the offer lapses if the corporation does not receive an acceptance of the offer within thirty days after it has been made.

Application to court.

195. (1) If a corporation fails to make an offer under subsection (1) of section 194, or if a dissenting shareholder fails to accept the offer made by the corporation, the corporation may, within fifty days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of any dissenting shareholders.

(2) If a corporation fails to apply to the court in the circumstances described in subsection (1), a dissenting shareholder may, within a further period of twenty days, apply to the court to fix a fair value for the shares of any dissenting shareholders.

Joined parties.

196. Upon an application to the court under section 195,

(a) all dissenting shareholders whose shares have not been purchased by the corporation are to be joined as parties and are bound by the decision of the court; and

(b) the corporation must notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.

Court powers.

197. (1) Upon an application to the court under section 191, the court may determine whether any other person is a dissenting shareholder who should be joined as a party; and the court must then fix a fair value for the shares of all dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court must be made against the corporation in favour of each dissenting shareholder of the corporation and for the amount of the shares of the dissenting shareholder as fixed by the court.

198. The court may allow a reasonable rate of interest **Interest.** on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment by the corporation.

199. (1) If subsection (3) applies, the corporation must, within ten days after the making of an order under subsection (3) of section 197, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares. **Recourse of dissenting shareholder.**

(2) If subsection (3) applies, a dissenting shareholder, by written notice delivered to the corporation within thirty days after receiving a notice under subsection (1),

(a) may withdraw his notice of dissent, in which case the corporation consents to the withdrawal and the shareholder is reinstated to his full rights as a shareholder; or

(b) may retain a status as a claimant against the corporation entitled to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to the corporation's shareholders.

(3) A corporation shall not make a payment to a dissenting shareholder under section 194 if there are reasonable grounds for believing that

(a) the corporation is or would, after the payment, be unable to pay its liabilities as they become due; or

(b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

 DIVISION J: CIVIL REMEDIES

Definitions.

200. In this Part,

- (a) "action" means an action under this Act;
- (b) "complainant" means, in relation to a corporation,
 - (i) a security holder, or a former holder of a security of the corporation or any of its affiliates;
 - (ii) a director or an officer or former director or officer of the corporation or any of its affiliates;
 - (iii) the Director; or
 - (iv) any other person who, in the discretion of the court, is a proper person to make an application under this Part.

DERIVATIVE ACTIONS

Derivative actions.

201. Subject to section 202, a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a corporation, apply to the court for leave to bring an action in the name and on behalf of the corporation or any of its subsidiaries, or intervene in an action to which any such corporation or any of its subsidiaries is a party.

Preliminary requirements.

202. No action may be brought and no intervention in an action may be made under section 201 unless the court is satisfied

- (a) that the complainant has given reasonable notice to the directors of the corporation or its subsidiary of his intention to apply to the court under section 201 if the directors of the corporation or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;
- (b) that the complainant is acting in good faith; and
- (c) that it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

203. In connection with an action brought or ^{Court powers.} intervened in under section 201, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order authorising the complainant, the Director or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debenture holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; or

(d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

RESTRAINING OPPRESSION

204. (1) A complainant may apply to the court for ^{Oppression restrained.} an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

(a) any act or omission of the corporation or any of its affiliates effects a result,

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any shareholder or debenture holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including without limiting the generality of the foregoing,

(a) an order restraining the conduct complained of;

(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a corporation's affairs by amending its articles or by-laws or creating or amending a unanimous shareholder agreement;

(d) an order directing an issue or exchange of securities;

(e) an order appointing directors in place of or in addition to all or any of the directors then in office;

(f) an order directing a corporation, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;

(g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the moneys paid by him for his securities;

(h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;

(i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 142 or an accounting in such other form as the court may determine;

(j) an order compensating an aggrieved person;

(k) an order directing rectification of the registers or other records of a corporation under section 207;

(l) an order liquidating and dissolving the corporation; or

(m) an order requiring the trial of any issue.

(4) If an order made under this section directs the amendment of the articles or by-laws of a corporation,

(a) the directors must forthwith comply with subsection (4) of section 174; and

(b) no other amendment to the articles or by-laws may be made without the consent of the court, until the court otherwise orders.

(5) A shareholder is not entitled under section 191 to dissent if an amendment to the articles is effected under this section.

(6) A corporation shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

(a) the corporation is unable or would, after that payment, be unable to pay its liabilities as they become due, or

(b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

(7) An applicant under this section may apply in the alternative for an order under section 301.

205. (1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or might be approved by the shareholders of the corporation or its subsidiary; but evidence of approval by the shareholders may be taken into account by the court in making an order under section 203, 204 or 301. **Staying action.**

(2) An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and, if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order

any party to the application or action to give notice to the complainant.

Interim costs.

206. In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements; but the complainant may be held accountable for those interim costs upon the final disposition of the application or action.

Rectification of records.

207. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to the court for an order that the registers or records of the corporation be rectified.

(2) An applicant under this section must give the Director notice of the application; and the Director is entitled to appear and be heard in person or by counsel.

(3) In connection with an application under this section, the court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order requiring the registers or other records of the corporation to be rectified;

(b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before that rectification;

(c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders; and

(d) an order compensating a party who has incurred a loss.

OTHER REMEDIAL ACTIONS

208. The Director may apply to the court for directions in respect of any matter concerning his duties under this Act; and on the application the court may give such directions and make such further order as it thinks fit. **Directions for Director.**

209. (1) When the Director refuses to file any articles or other documents required by this Act to be filed by him before the articles or other documents become effective, the Director must, **Refusal by Director.**

(a) within sixty days after the receipt thereof by him or sixty days after he receives any approval required under any other Act, whichever is the later date, and,

(b) after giving the person who sent the articles or document an opportunity to be heard,

give written notice of the refusal to that person together with the reasons for the refusal.

(2) If the Director does not file or give written notice of his refusal to file any articles or document within the time limited therefor in subsection (1), then, for the purposes of section 210, the Director has refused to file the articles or document.

210. A person who feels aggrieved by a decision of the Director may apply to the court for an order requiring the Director to change his decision; and upon the application the court may so order and make any further order it thinks fit. **Appeal from Director.**

211. If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a Corporation does not comply with this Act, the regulations, articles, by-laws, or any unanimous shareholder agreement of the corporation, a complainant or creditor of the corporation may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act, the regulations, articles, by-laws or unanimous shareholder agreement, as the case may be. **Restraining order, etc.**

Summary application.

212. Where this Act states that a person may apply to the court, the application may be made in a summary manner by summons or by such other manner as may be provided by the rules of court, but subject to any order respecting notice to interested parties or to costs, or any other order the court thinks fit.

PART II

CREDITOR PROTECTION

Disqualified receivers.

213. (1) A person may not be appointed a receiver or receiver-manager of any assets of a corporation, and may not act as such a receiver or receiver-manager, if the person

(a) is a body corporate, or

(b) is an undischarged bankrupt.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1) or under any provision contained in a debt obligation or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment or by the court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the commencement of this Act.

Functions of receivers.

214. A receiver of any property of a corporation, may, subject to the rights of the secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the court, he may not carry on the business of the corporation.

Functions of receiver-managers.

215. A receiver of a corporation may, if he is also appointed manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.

216. When a receiver-manager of a corporation is appointed by the court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged. **Directors' powers stopped.**

217. A receiver or receiver-manager of a corporation appointed by the court must act in accordance with the directions of the court. **Duty under court direction.**

218. A receiver or receiver-manager of a corporation appointed under an instrument must act in accordance with that instrument and any directions of the court made under section 220. **Duty under instrument.**

219. A receiver or receiver-manager of a corporation must **Duty of care.**

(a) act honestly and in good faith; and

(b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.

220. Upon an application by a receiver or receiver-manager of a corporation, whether appointed by the court or under an instrument, or upon an application by any interested person, the court may make any order it thinks fit, including, **Directions by court.**

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

(b) an order determining the notice to be given to any person, or dispensing with notice to any person;

(c) an order declaring the rights of persons before the court or otherwise, or directing any person to do or abstain from doing anything;

(d) an order fixing the remuneration of the receiver or receiver-manager;

(*e*) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,

- (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation,
 - (ii) to relieve any such person from any default on such terms as the court thinks fit, and
 - (iii) to confirm any act of the receiver or receiver-manager;
- and

(*f*) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

**Duties of
receivers, etc.**

221. A receiver or receiver-manager of a corporation must

(*a*) immediately give notice of his appointment to the Director, and of his discharge;

(*b*) take into his custody and control the property of the corporation in accordance with the court order or instrument under which he is appointed;

(*c*) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his control;

(*d*) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;

(*e*) keep accounts of his administration, which must be available during usual business hours for inspection by the directors of the corporation;

(*f*) prepare financial statements of his administration at such intervals and in such form as are prescribed;

(*g*) upon completion of his duties, render a final account of his administration in the form adopted for interim accounts under paragraph (*f*); and

(*h*) file with the Director a copy of any financial statement mentioned in paragraph (*f*) and any final account mentioned in paragraph (*g*) within fifteen days

of the preparation of the financial statement or rendering of the final account, as the circumstances require.

222. (1) A receiver of assets of a corporation appointed with powers contained in any instrument **Liability of receivers.**

(a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides, and

(b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed receiver;

but nothing in this subsection limits any right to an indemnity that he would have, apart from this subsection, or limits his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it,

(a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and

(b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) applies to a receiver appointed before or after the commencement of this Act, but does not apply to contracts entered into before the commencement of this Act.

223. Where a receiver or a receiver-manager of any assets of a corporation has been appointed for the benefit of holders of debt obligations of the corporation, every invoice, order of goods or business letter issued by or on behalf of the corporation or the receiver, being a document **Notice of receivership.**

on or in which the name of the corporation appears, must contain a notice that a receiver or a receiver-manager has been appointed.

Statement of
affairs.

224. (1) Where a receiver of the whole, or substantially the whole, of the assets of a corporation, in this section and section 225 referred to as the "receiver", is appointed under powers contained in a trust deed, for the benefit of the holders of any debt obligations of the corporation secured by a general floating charge, then, subject to this section and section 225,

(a) the receiver shall forthwith send notice to the corporation of his appointment;

(b) within fourteen days after receipt of the notice by the corporation, or such longer period as may be allowed by the receiver, there shall be made out by the corporation and submitted to the receiver a statement in accordance with section 225 as to the affairs of the corporation;

(c) the receiver shall, within two months after receipt of the statement, send

(i) to the Director and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Director, also a summary of the statement and any comments, thereon;

(ii) to the corporation, a copy of those comments or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) to the trustee of the trust deed, a copy of the statement and those comments, if any; and

(iv) to the holders of all debt obligations belonging to the same class as the debt obligations in respect of which he was appointed, a copy of that summary.

(2) The receiver shall,

(a) within two months or such longer period as the court may allow, after the expiration of the period of twelve months from the date of his appointment and after every subsequent period of twelve months, and

(b) within two months or such longer period as the court may allow after he ceases to act as receiver of the assets of the corporation,

send to the Director, to the trustee of the trust deed, and to the holders of all debt obligations belonging to the same class as the debt obligations in respect of which the receiver was appointed, an abstract in a form approved by the Director.

(3) The abstract must show

(a) the receiver's receipts and payments during the period of twelve months or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act, and

(b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the corporation is being liquidated, this section and section 225 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

**Contents of
statement.**

225. (1) The statement as to the affairs of a corporation required by section 224 to be submitted to the receiver or his successor must show, as of the date of the receiver's appointment,

(a) the particulars of the corporation's assets, debts and liabilities,

(b) the names, addresses and occupations of the corporation's creditors,

(c) the security interests held by the corporation's creditors respectively,

(d) the dates when the security interests were respectively created, and

(e) such further or other information as is prescribed.

(2) The state of affairs of the corporation must be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the corporation at that date, or by such of the persons, hereafter in this subsection mentioned, as the receiver or his successor, subject to the direction of the Director, may require to submit and verify the statement, namely: persons who

(a) are or have been officers of the corporation;

(b) have taken part in the formation of the corporation at any time within one year before the date of the receiver's appointment;

(c) are in the employment of the corporation, or have been in the employment of the corporation within that year and, in the opinion of the receiver, are capable of giving the information required; or

(d) are or have been within that year officers of or in the employment of an affiliated corporation.

(3) Any person making or verifying the statement of affairs of a corporation or any part of it must be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the

making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the court.

PART III

REGULATION OF INTERNATIONAL BUSINESSES

DIVISION A: LICENSING REQUIREMENTS

226. Hereinafter in this Act,

Definitions.

(a) "advisory committee" means a committee established under Part V to assist the appropriate official in carrying out his duties under this Act;

(b) "appropriate official" means, as the circumstances require,

(i) in relation to international banking and trust business, the Supervisor;

(ii) in relation to international insurance business, the Superintendent; and

(iii) in relation to all other international trades or businesses, an official designated by the Minister for the purpose;

(c) "licensee" means a corporation that holds a subsisting licence required under this Part;

(d) "Superintendent" refers to the Superintendent of Insurance;

(e) "Supervisor" refers to the Supervisor of Banking and Trust Corporations.

227. (1) Notwithstanding section 9, no certificate of incorporation may be issued in respect of a corporation whose articles of incorporation do not provide that the corporation is restricted from carrying on any international banking, trust or insurance business unless a tentative licence under this Part has been issued in respect of the proposed corporation. **Pre-licensing required.**

(2) No licence shall be required under this Part with respect to any international trade or business other than international banking, trust or insurance business.

(3) A corporation shall not carry on, within Antigua and Barbuda, any business activity that is not necessary or incidental to the international trade or business for which it is licensed under this Part.

(4) In this section "business activity" means any trade, business, venture or concern for profit or gain.

Tentative proposal.

228. (1) A person who intends to incorporate a corporation under this Act to carry on an international banking, trust or insurance business may, on behalf of the intended corporation, submit to the Superintendent or Supervisor, or to both, as the circumstances require, a pre-incorporation application for a tentative licence on behalf of the intended corporation, in the prescribed form.

(2) On payment of the fee determined under this Part, the appropriate official may issue a tentative licence for the intended corporation subject to such conditions as the appropriate official considers necessary to ensure compliance with this Act.

(3) The appropriate official may revoke a tentative licence if, after the incorporation of the corporation for which it was issued, a condition of the licence has not been complied with; but if the conditions have been complied with the appropriate official must issue an ordinary licence under section 230 for that corporation.

Incorporation upon licence.

229. Section 9 applies when a tentative licence has been issued under section 228 in respect of any banking, trust or insurance business that a proposed corporation intends to carry on.

Entitlement to licence.

230. (1) The appropriate official must, upon an application made to him, issue an applicant, as the case requires, with a licence or tentative licence to carry on from within and outside Antigua and Barbuda any international trade or business for which it applies, if, after such investigation and inquiries as he is required to make pursuant to this Part, the appropriate official has no reason to believe that it would be contrary to the public interest to do so and the initial fee for the first year, as determined under this Part, has been received with the application.

(2) If the appropriate official refuses to issue a licence to a corporation on the grounds that it would be contrary to public policy to do so, his decision may be appealed within thirty days of the refusal to a judge of the court in chambers, whose decision thereon is final.

231. (1) An application for a licence to carry on an international trade or business must **Formalities.**

(a) give details of the applicant corporation or intended corporation for which the application is made;

(b) give the names and addresses of the directors or proposed directors of the applicant corporation or intended corporation, as the case requires;

(c) give particulars of all the international trades or businesses it is proposed that the corporation or intended corporation will carry on from within Antigua and Barbuda and elsewhere;

(d) give the names of any shareholders or subscribers for shares of the corporation or intended corporation for which the application is being made, and the number of shares held or to be held by each; and

(e) provide such other information of a financial or other nature as the appropriate official may require either generally or in each case.

(2) An application for a licence must be accompanied with the initial fee, as determined under this Part, for each trade or business that the applicant corporation or intended corporation wishes to carry on.

232. (1) On receipt of an application for a licence under this Part, the appropriate official may cause such investigations and inquiries to be made of the applicant corporation, its directors and officers or proposed directors and officers, its financial circumstances, and of such of its affiliates or associates as he considers required in the public interest; and when the application is made for an intended corporation, the appropriate official may make such like investigations and inquiries of the proposed directors, shareholders and the promoters of the intended corporation. **Examination of applicant.**

(2) In particular, but without limiting the generality of subsection (1), the appropriate official may, in respect of the applicant corporation or intended corporation for which the application is being made, require an examination to be made of

(a) the financial status and history of the applicant corporation and any of its directors, affiliates and associates or of the applicant and any proposed affiliates and associates of the intended corporation;

(b) the character and experience of the directors or proposed directors of the corporation or intended corporation, as the case requires;

(c) the adequacy of its capital for the purpose of the trade or business it intends to carry on;

(d) the needs of the public or persons it intends to serve, and

(e) its earnings prospects and its prospects as an employer within Antigua and Barbuda.

Duty to issue or refuse.

233. (1) The appropriate official must issue or refuse a licence under this Part to an applicant

(a) within three months of the receipt of the application, or

(b) if additional information is required by the appropriate official, within fourteen days of the receipt by him of the additional information.

(2) In reviewing an application for a licence under this Part, the appropriate official may consult with his advisory committee; and he may be advised by that body regarding the public interests in respect of the licence application.

(3) When the appropriate official is of the opinion that it is in the public interest to do so, he may issue a licence to an applicant subject to such terms and conditions as are required in respect of the particular international trades or businesses for which licences are issued to an applicant.

Refusal of licence.

234. (1) When the appropriate official refuses a licence under this Part, he must inform the applicant of the

grounds for his refusal, but he need not give the reasons on which the grounds were determined.

(2) If the appropriate official states that the refusal is in the public interest, he need give no other grounds for his refusal.

235. (1) A licence issued under this Part is subject to such terms and conditions as are set out in the licence, and remains valid until revoked pursuant to this Part; but it is a condition of the licence that an annual fee be paid in the amount determined under this Part and at the prescribed time in respect of each trade or business to which the licence relates. **Conditions of licence.**

(2) It is also a condition of a licence issued under this Part that the licensee under the licence will notify the appropriate official and the Director of the creation of any subsidiary within or outside Antigua and Barbuda, and of the establishment by it of any business places outside Antigua and Barbuda.

236. (1) The appropriate official may revoke the licence of a licensee, if he **Revocation of licence.**

- (a) does not commence the licensed activity within six months after the issuance of the licence;
- (b) contravenes a condition of the licence;
- (c) commits an offence under this Act; or
- (d) ceases to carry on the international trade or business for which the licence was issued.

(2) When the appropriate official intends to revoke a licence of a licensee, the appropriate official must give notice in writing to the licensee of his intention and give the licensee a reasonable opportunity to show cause why the licence should not be revoked.

(3) When a licence is revoked, the appropriate official must give to the licensee concerned notice in writing of the revocation of the licence and the reasons therefor.

Appeal from revocation.

237. (1) A licensee aggrieved by the revocation of its licence by the appropriate official may, within thirty days of the giving of the written notice of its revocation, appeal the revocation to a judge of the court in chambers, whose decision thereon is final.

(2) Pending an appeal under subsection (1) of the revocation of a licence, the appropriate official may suspend the licence until the appeal is determined; and during such suspension the licensee shall not carry on the trade or business for which the licence was issued.

(3) When the appropriate official revokes a licence and there is no appeal therefrom, or if there is an appeal and the appeal is disallowed, the notice of the revocation of the licence must be published by the appropriate official in the *Gazette* and in a newspaper published in Antigua and Barbuda; and the appropriate official may give notice of the revocation also in any country in which he considers it desirable to do so in the public interest of Antigua and Barbuda.

DIVISION B: INTERNATIONAL BANKING BUSINESS

BANKING BUSINESS

Stated capital requirements.

238. (1) A banking corporation, that is to say, a corporation that is licensed to carry on an international banking business solely or together with any other international trade or business, shall, as a condition of that licence, maintain a stated capital account in any currency in a minimum amount that is equal to or greater than one million United States dollars.

**Nature of its business.
Cap. 40.**

239. A banking corporation is not subject to any reserve requirements under the Banking Act, nor is it subject to the licensing requirement or other requirements of that Act in other respects.

Banking activities.

240. A banking corporation may engage in any generally acceptable banking activities from within Antigua and Barbuda and elsewhere, but it shall not knowingly accept deposits in the legal tender of a country of the Caricom region.

241. The accounts maintained by a banking corporation for its customers may be identified in any manner, but a record of the account that identifies the beneficial interests in the account must be maintained by the corporation. **Identifying accounts.**

242. (1) Subject to section 244, a banking corporation must, as a condition of its licence under this Part, submit to the appropriate official: **Reporting.**

(a) a quarterly return providing an analysis of customers' liabilities to the corporation in respect of loan, advances and other assets of the corporation, and a statement of assets and liabilities, which return shall be submitted not later than twenty-one days after the end of the quarter to which it relates; and

(b) such other returns as the appropriate official requires, which shall be submitted within such period and in such manner as he directs.

(2) The returns under subsection (1) must be in a prescribed form or in a form approved by the appropriate official.

243. Subject to section 244, the Supervisor may require a banking corporation to submit to him such additional information and returns as the Supervisor considers necessary for the proper understanding of any statement or return received under section 242; and the corporation shall submit the required additional information and returns within such time and in such manner as are prescribed. **Additional information.**

244. (1) Subject to an express agreement between a banking corporation and a customer of the corporation, no person shall disclose any information relating to the business affairs of the customer that he has acquired as an officer, employee, agent, auditor, solicitor of the banking corporation, or otherwise in the performance of his duties or the exercise of his functions under this Act, except in the performance or exercise of those duties or functions or pursuant to an order of a court of competent jurisdiction in Antigua and Barbuda. **Confidential matters protected.**

(2) No person shall enquire as to any matters covered under subsection (1) except in the performance of his duties under this Act.

(3) No statement, return or information submitted under section 242 or 243 may be required with respect to the affairs of any particular customer of a banking corporation: and the Supervisor must protect those statements, returns and information as confidential.

(4) Nothing in this Act impairs the duty of a bank to protect the confidentiality of the business affairs of its customers.

(5) No court order shall be issued under subsection (1) except in connection with an investigation authorized under this Act or in connection with the giving of evidence for the purpose of or in the course of the trial of any person in respect of an alleged criminal offence triable within Antigua and Barbuda or which would have been so triable if it had been committed within Antigua and Barbuda.

Published statements.

245. The appropriate official must prepare and, at the cost of the banking corporations concerned, have published in the *Gazette* consolidated statements aggregating the figures in the quarterly returns received under section 242.

DIVISION C: INTERNATIONAL TRUST BUSINESS

Stated capital requirements.

246. A trust corporation, that is to say, a corporation that is licensed to carry on an international trust business solely or together with any other international trade or business, shall as a condition of that licence, maintain a stated capital account in any currency in a minimum amount equal to or greater than five hundred thousand United States dollars.

Powers, etc.

247. A trust corporation has all the powers, rights, duties and obligations properly applying to trustees under the laws of Antigua and Barbuda, but subject to any provisions of this Part.

248. Nothing in subsection 247 prevents an instrument of trust entered into by a trust corporation from applying the law of another country to the trust; but if it does so section 249 to 253 do not apply to the trust.

Foreign trust law.

249. (1) The rule of law known as the rule against perpetuities does not apply with respect to any property vested in a trust corporation as the trustee thereof.

Perpetuities, accumulations.

(2) The rule of law relating to accumulations does not apply in respect of any trusts vested in a trust corporation.

250. (1) Subject to subsection (2), a trust corporation that holds trust funds awaiting investment or distribution must not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the trust account.

Funds awaiting disposition.

(2) Unless it is contrary to the terms of the instrument establishing the trust, the trust funds described in subsection (1) may be held in any commercial or savings department that the trust corporation operates, subject to such conditions as are prescribed therefor.

251. (1) A common trust fund is a trust that operates by the pooling of funds for a number of participants who share, as beneficiaries under the trust, in the income or other gains derived from the acquisition, holding, management or disposal of assets acquired for the trust.

Common trust funds.

(2) A trust corporation may, in the course of its business, establish, maintain and administer one or more common trust funds and, subject to subsection (3), invest assets held in trust accounts in a common trust fund.

(3) The assets of a trust account shall only be invested in a common trust fund if the instrument establishing the trust expressly permits that investment and the consent in writing of any co-trustee is obtained to the investment.

(4) A common trust fund must be established, maintained and administered by a trust corporation in accordance with a written declaration of trust in a form approved by the directors of the trust corporation and containing any particulars required by the regulations to be set out in the declaration.

(5) A person having an interest in a common trust fund, as beneficiary or otherwise, is entitled, at his own reasonable cost, to be supplied by the trust corporation with a copy of the declaration applying to that trust fund.

(6) A trust account that participates in a common trust fund has a beneficial interest in so much of the common trust fund as is proportionate to the amount of that participation.

(7) If the declaration of trust establishing a common trust fund so provides, an interest in a common trust fund is negotiable and assignable; and an interest in the fund may also be disposed of in the manner provided by the declaration of trust relating to the fund or as prescribed in the absence of any such provision relating thereto in the declaration.

Separation of
trust assets.

252. In carrying on its business, an international trust corporation shall

(a) keep all assets held in trust separate from its other assets, and

(b) keep separate from those of its other accounts the assets of each trust account unless they are properly identified as the property of the trust account, but subject to section 251.

Dealing with
trust assets.

253. (1) Subject to the terms of the instrument establishing the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the trust corporation administering the trust.

(2) A trust corporation may sell assets held by it in a trust account to another trust account held by it, if

(a) the transaction is fully disclosed to the parties who have an interest in those trust accounts and their prior consent is obtained to the transaction,

(b) the transaction is fair to both accounts, and

(c) the transaction is not prohibited by the terms of the instruments establishing the trust.

254. Section 241 to 245 apply mutatis mutandis to a trust corporation. **Information confidential.**

DIVISION D: ABANDONED PROPERTY

255. (1) Property of the following kinds held or owing in the course of its business by a banking corporation and in respect of which no activity has been evidenced for a period of ten years is abandoned property, that is to say: **Abandoned property.**

(a) any general deposit; that is, a demand, saving or matured time deposit, made with the corporation, together with any interest or dividends but excluding legal fees;

(b) funds that were paid toward the purchase of securities or other interest in the corporation;

(c) any sum payable on cheques or other instruments on which the corporation is liable;

(d) intangible personal property or moveables and any income or increment thereon held in trust; and

(e) the contents of a safe deposit box upon which the lease or rental period has expired and in respect of which the corporation has, by registered post addressed to the latest known address of the lessee of the safe deposit box, given notice of the corporation's intention to deliver the contents of the box to the Minister, and the lessee of the box had failed to respond within a period of one year thereafter.

(2) Activity is evidenced in respect of the property described in subsection (1) if the owner of the property has

(a) within ten years of the date of the deposit increased or decreased the amount of the deposits or

presented a passbook or other record for the crediting of interest on the deposit;

(b) within ten years of paying funds for the purchase of securities or other interests mentioned in subsection (1), increased or decreased the amount of the funds or presented a document or book for the crediting of dividends in respect thereof;

(c) within ten years of making the latest deposit, inquiry or communication concerning any item mentioned in subsection (1), corresponded with the corporation concerning the item or otherwise indicated an interest in the items as evidenced by a memorandum about them by the corporation.

Disposal of
abandoned
property.

256. (1) The corporation shall, once in each financial year of the corporation, report to the appropriate official all its holding of abandoned property and from time to time transfer to the appropriate official in the prescribed manner all abandoned property in its possession.

(2) When a corporation transfers any abandoned property to the appropriate official pursuant to this Part, the corporation is relieved from any liability to the beneficial owners thereof to the extent of the value of the property transferred to the appropriate official.

(3) Within thirty days after a corporation reports to the appropriate official pursuant to subsection (1), the appropriate official must publish in the *Gazette* a notice of the name of the owner and particulars concerning the abandoned property and mail a copy of that notice to the beneficial owner of the property, at his latest known address; but, with the approval of the court on application to it, the appropriate official may be exempted from mailing the copy of the notice to the owner.

Sale of
abandoned
property.

257. (1) The appropriate official may sell at public auction any property that has been transferred to him under section 256, after the expiration of thirty days from the latest date of publication of the notice referred to in subsection (3) of that section and after the mailing of the copy of the notice to the owner, as the case may be.

(2) The public auction may be held after such reasonable advertising of the sale as the appropriate official considers suitable.

(3) The appropriate official must pay into the Consolidated Fund all money received by him as abandoned property and the proceeds of the public auction of any abandoned property less, in each case,

(a) such amount as the appropriate official considers necessary to reserve for the payment of claims later made and approved by him; and

(b) amounts deducted by the appropriate official for reasonable expenses incurred in connection with the publishing and mailing of notices, service charges, and the sale of abandoned property.

258. (1) A person who claims a beneficial interest in any abandoned property transferred to the appropriate official may make a claim for the value thereof within the prescribed time and in the prescribed manner. **Claims against property.**

(2) If the appropriate official is satisfied that a claimant is entitled to the abandoned property, the appropriate official must deliver up the property, or make payment for the value thereof, as the circumstances require.

(3) A person aggrieved by a refusal of his claim for abandoned property by the appropriate official may, within twenty-one days of receiving notice of the refusal, appeal the decision to a judge of the court in chambers, who may make such order thereon as he considers equitable.

DIVISION E: EXAMINATION OF BANKS, TRUST AND INSURANCE CORPORATIONS

259. When the appropriate official has reasonable grounds for believing that a bank, trust or insurance corporation is not in a sound financial condition or that it is not acting in compliance with this Act, the appropriate official may immediately appoint an examiner or himself examine the affairs of the corporation. **Examination of affairs by official.**

Powers of examiners.

260. (1) Subject to subsection (2), a corporation shall, at such time as the examiner under subsection (1) fixes, produce for the examiner all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally and shall give the examiner such information concerning its affairs and business as the examiner requests of it.

(2) An examiner may not have access to, nor shall he be given access to, the name or the account of any depositor or the name of any settlor or beneficiary of a trust, if the deposit agreement or instrument establishing the trust, as the case may be, had directed that it be kept secret.

(3) Notwithstanding subsection (2), the court may, on the application of the appropriate official, order the production of information protected under that subsection if the court is satisfied that it is required in the public interest by the examiner for the proper performance of his duties under this Part and that there are no other lawful means of acquiring the information.

Remedial actions.

261. (1) When the appropriate official is of the opinion that an examination of a corporation pursuant to this Part indicates that the corporation is carrying on its business in an unlawful manner or is in unsound financial condition,

(a) the appropriate official may require that the corporation immediately take such remedial measures as that official considers necessary, and

(b) the appropriate official

(i) may, in order to advise the corporation on the action to be taken by it to remedy the situation appoint for that purpose a person, who, in the opinion of the appropriate official, has had training and experience in the same business that the corporation carries on, or

(ii) may suspend the licence of the corporation for a period not exceeding three months.

(2) A person appointed under subsection (1) is entitled to be paid such remuneration as the appropriate official may

determine, which must be charged to and paid by the corporation concerned.

DIVISION F: INTERNATIONAL INSURANCE BUSINESS

262. An insurance corporation, that is to say, a corporation that is licensed to carry on an international insurance business solely or together with any other international trade or business, shall, as a condition of that licence, maintain a stated capital account in any currency in a minimum amount of two hundred and fifty thousand United States dollars. **Stated capital requirements.**

263. (1) An insurance corporation may engage in all types of insurance in the course of its business. **Nature of business.**

(2) Insurance is a contract whereby

(a) a person is provided with protection against loss or liability to loss in respect of any or all risks to which he might be exposed, or

(b) payment is to be made of money or other thing of value upon the happening of a stated or described event, or periodically in relation to the continuation or cessation of human life, or both.

(3) Insurance includes re-insurance.

264. An insurance corporation is exempt from the insurance laws that apply to insurers engaged in domestic insurance business, including licensing requirements. **Exemption from laws.**

265. Domestic insurance business refers to the ordinary insurance business that is carried on in Antigua and Barbuda and that is not international insurance business. **Domestic insurance business.**

266. (1) An insurance corporation shall submit to the Superintendent an annual statement of its accounts prepared by an independent auditor, in accordance with generally accepted accounting practices, for the purpose of enabling the Superintendent to determine whether the corporation is solvent, has paid all applicable liabilities and is not operating in a manner contrary to this Act or the public interest. **Annual account statement.**

(2) The Superintendent may require a statement of account from an insurance corporation whenever he considers it necessary to obtain such a statement.

(3) A statement submitted pursuant to this section is confidential and must be dealt with accordingly.

Investigating corporation.

267. (1) When the Superintendent is of the opinion that an insurance corporation

(a) is carrying on its business in a manner that is detrimental to the public interest or to the interests of its creditors, shareholders or policy-holders, or

(b) is carrying on its business in a manner that is in contravention of this Act,

the Superintendent may require the corporation to remedy the situation forthwith or he may suspend the corporation's licence under this Part and commence an investigation of the business activities of the corporation.

(2) The provisions of Division E apply *mutatis mutandis* to an investigation made pursuant to this section.

Revocation of licence.

268. (1) If, after an investigation of the business of an insurance corporation, the Superintendent is of the opinion that the licence of the corporation should be revoked in the public interest, he may give the corporation notice in writing that he intends to revoke its licence under this Part.

(2) The insurance corporation must be given an opportunity to present arguments against the revocation of its licence before such person as the Superintendent may appoint for the purpose; and the licence may not be revoked until after that person reports to the Superintendent.

(3) The insurance corporation may, within thirty days after the conclusion of a hearing under subsection (2), appeal a decision to revoke its licence to a judge of the court in chambers, whose decision thereon is final.

Superintendent's duty.

269. (1) Upon the revocation under this Part of an insurance corporation's licence, the Superintendent may provide, by such means, as he considers necessary, for the con-

tinuation of the corporation's policies of insurance so that its policy-holders are protected.

(2) In carrying out his duties under this section, the Superintendent may cause a receiver-manager to be appointed for the corporation pursuant to Part II.

DIVISION G: SPECIAL TAXATION PROVISIONS

Residents and Non-Residents of Antigua and Barbuda

270. (1) For the purpose of this Act, the following ^{Residents.} are residents, namely:

(a) a natural person ordinarily resident in Antigua and Barbuda for a period of not less than twelve months or a citizen of Antigua and Barbuda with a residence in Antigua and Barbuda;

(b) any incorporated or other body, incorporated, formed or organised in Antigua and Barbuda, the majority of the shares or other ownership of which is beneficially held by persons who are residents within the meaning of paragraph (a);

(c) any incorporated or other body, wherever incorporated, formed or organised, that is controlled directly or indirectly by a person described in paragraph (a) or (b);

(d) any incorporated body or other body that is controlled by a body described in paragraph (c) by the Government of Antigua and Barbuda or any agency thereof;

(e) Her Majesty in right of Antigua and Barbuda;

(f) a trust

(i) established by a resident as defined in any of paragraphs (a) to (e), other than a trust for the administration of funds for the benefit of persons a majority of whom are persons resident outside Antigua and Barbuda, or

(ii) in which residents as defined in any of paragraphs (a) to (e) have fifty per cent or more of the beneficial interest; or

(g) any incorporated or unincorporated body that is controlled directly or indirectly by a trust defined in this section as a resident of Antigua and Barbuda.

(2) A reference in this Part to any beneficial interest or to anything being beneficially owned or held includes ownership through a trust, legal representative, agent or other intermediary.

(3) A licensee controlled directly or indirectly by residents as defined in subsection (1) is, for the purposes of this Act, deemed not to be a resident in respect of any international trade or business for which it is licensed under this Part.

(4) Persons are not residents for the purposes of this Part if they are not residents within the meaning of subsection (1) of section 270.

Exempt corporations.

271. For the purposes of this Division, an exempt corporation shall mean any corporation formed or continued under this Act.

Exemption from tax.

272. (1) No income tax, capital gains tax, or other direct tax or impost may be levied in Antigua and Barbuda upon the profits or gains of an exempt corporation in respect of the international trade and business it carries on from within Antigua and Barbuda.

(2) No income tax, capital gains tax or other direct tax or impost may be levied in Antigua and Barbuda in respect of any securities or assets of an exempt corporation that are beneficially owned by an exempt corporation or by a person who is not a resident.

(3) No estate, inheritance, succession or similar tax or impost may be levied in Antigua and Barbuda in respect of any securities or assets of an exempt corporation that are beneficially owned by an exempt corporation or a person who is not a resident.

(4) No tax, duty or impost may be levied upon the increment in value of the property or other assets in Antigua

and Barbuda or elsewhere of an exempt corporation other than upon such of them as are distributed to residents.

273. (1) No tax, duty or other impost may be levied upon an exempt corporation, its security holders or transferees in respect of the transfer of all or any part of its securities or other assets to another exempt corporation or to a person who is not a resident. **No assets transfer tax.**

(2) When an exempt corporation or a person who is not a resident transfers securities or assets of an exempt corporation that are held by that exempt corporation or person to another exempt corporation or to another person who is not a resident, the transfer is exempt from the payment of any tax, duty or other impost thereon.

(3) No income tax or capital gains tax, and no other direct tax or impost may be levied or collected in Antigua and Barbuda, in respect of any dividends, interest or other returns from any securities, deposits or borrowings of an exempt corporation or any assets managed by the exempt corporation if the dividends, interest or other returns are in respect of securities, deposits, borrowings or assets beneficially owned by another exempt corporation or a person who is not a resident; but the onus of establishing ownership lies upon the exempt corporation holding or managing the deposits, borrowings or assets.

274. (1) Notwithstanding any provision of the Income Tax Act but subject to subsection (2), no exempt corporation need withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowings of the exempt corporation from that person or in respect of securities of the exempt corporation held by that person. **Withholding tax and report.**

(2) All dividends, interest or other returns attributable to the securities of, or the management of, assets by an exempt corporation that are payable to a resident who is known to be a resident by the exempt corporation or who, with the exercise of reasonable care by the exempt corporation, could be known by him to be a resident must be reported to the Commissioner of Inland Revenue by the exempt corporation.

Exempt trusts.

275. When a trust is established by a settlor who is not a resident in favour of an exempt corporation or in favour of a person who is not a resident, the trust is exempt from any tax, duty or impost in Antigua and Barbuda, if the cash funds of the trust consist solely of currencies and debt obligations expressed in currencies that are foreign in every country of the Caricom region and the trust is under the management of an exempt corporation.

Duration of tax exemption.

276. Any tax exemption provided under this Act shall continue in effect for a period of fifty years from the date of incorporation of the exempt corporation.

Service charges.

277. (1) Nothing in this Division constitutes an exemption from the payment of any charge by the Government or any agency of the Government in the nature of a service charge or utility charge.

(2) A service or utility charge includes a charge or fee levied or imposed for the issuance of any incorporation, registration or licence required in Antigua and Barbuda, but does not include stamp duties under the Stamp Act.

Cap 410.**Customs relief.**

278. The Minister may by order grant a further exemption to an exempt corporation in respect of its international trade or business from all or so much of any duty payable under the Customs Duties Act, or any other customs impost or surcharge in respect of its business as the Minister thinks reasonable, if the exempt corporation satisfies the Minister that the goods concerned are not being manufactured in the Caricom region, are essential as equipment or fixtures for carrying on his business from within Antigua and Barbuda and are not merely goods that will be used up or expended in the ordinary course of business.

Specialist incentives.

279. When the Minister is satisfied that an exempt corporation requires the services of specially qualified persons in order to do its business effectively from within Antigua and Barbuda and that it can neither acquire those services in Antigua and Barbuda nor acquire them elsewhere without special benefits being made available for them, the Minister may, by order, in a special case or generally, provide that those persons

(a) be exempted from specified taxes in Antigua and Barbuda;

(b) be permitted to be paid in a foreign currency into a trust account without being liable to be taxed thereon or on the interest thereon; and

(c) be permitted to be paid in some other prescribed manner in another currency or otherwise without being liable to be taxed thereon in Antigua and Barbuda;

notwithstanding any legislation relating to income tax or the Exchange Control Act.

Cap. 157.

280. The income, profits, gains and other revenues, and the funds and securities of an exempt corporation that are generated, acquired or managed in the course of the international trade or business of the exempt corporation are exempt from the Exchange Control Act; and, unless the exempt corporation is a resident, the income, profits, gains and other revenues of the exempt corporation are also exempt from that Act.

Exchange controls.

Cap. 157.

281. An exempted corporation is exempt from stamp duties under the Stamp Act in respect of all transactions entered into in relation to the exempted corporation's international trade or business.

Stamp duty exemption.
Cap. 410.

DIVISION H: ANNUAL FEES

282. (1) The following fees are payable under this Act for each of the following international trades or businesses;

Initial fees.

(a) for an international banking business, an amount equal to five thousand United States dollars;

(b) for an international trust business, an amount equal to two thousand five hundred United States dollars;

(c) for an international insurance business, an amount equal to two thousand five hundred United States dollars; and

(d) for any other international trade or business, an amount equal to two hundred and fifty United States dollars.

(2) The initial fee under this Act must be paid in accordance with this Act and the regulations.

Annual fees.

283. (1) The fees payable under Section 282 shall be payable annually.

(2) The annual fee must be paid at the times and in the manner prescribed.

PART IV

WINDING UP CORPORATIONS

General

Conditions on winding up.

284. (1) Except with the prior written approval of the appropriate official, a corporation may not be voluntarily liquidated and dissolved unless the corporation is to be wound up under section 291, 292 or 294.

(2) Approval for a voluntary winding up under this Part may be given by the appropriate official only if he is satisfied that the corporation is solvent and has sufficient assets to repay its depositors, trust accounts and other creditors without delay.

(3) When in respect of any corporation that carries on an international banking, trust or insurance business, the appropriate official finds that there is imminent danger of the corporation's insolvency, he may approve the voluntarily winding up of the corporation if

(a) the winding up is to be effected in whole or in part through the sale of any assets of the corporation to another corporation; and

(b) the deposit, trust and policy liabilities of the corporation to be wound up are to be assumed by the other corporation.

285. (1) When a corporation receives the approval ~~Starting the~~ of the appropriate official to its voluntary winding up, the corporation must

(a) apply to the court for an order dissolving the corporation, and

(6) cease to do business immediately and retain only such staff as is necessary for an orderly winding up.

(2) Notwithstanding any other provision of this Act, within thirty days after the receipt of the approval of the appropriate official for the winding up of a corporation that carries on an international banking, trust or insurance business, a notice of the voluntary winding up shall be sent by the corporation by personal service or by other prescribed manner to the depositors, beneficiaries, policyholders and any other persons having an interest in the funds or properties of the corporation.

(3) The notice referred to in subsection (2) shall also be published in the *Gazette* and placed in a conspicuous place on the premises of each office or branch of the corporation in Antigua and Barbuda and elsewhere.

286. (1) When a corporation that is being wound up carries on an international banking, trust or insurance business, the assets that remain after paying the claims of the depositors, beneficiaries, policy claimants and other creditors of the corporation are to be distributed among the security holders of the corporation in proportion to their respective rights. **Protection of depositors, etc.**

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a corporation described in that subsection may be made

(a) before all claims of depositors, beneficiaries, policy claimants and other creditors have been settled or, in the case of a disputed claim, before the corporation has deposited with the Supervisor or Superintendent, as the case requires, sufficient funds to meet any liability that could arise under that claim;

(b) before any funds that are payable to a claimant described in paragraph (a) who has not made his claim have been deposited with the Supervisor or Superintendent, as the case requires; or

(c) before any funds or properties that are held by the corporation and cannot be returned, in compliance with section 285 to the persons who have any interests therein have been deposited with or transferred to the Supervisor or Superintendent, together with the relevant records.

INSOLVENCY OR OTHER REASONS

Appointment of
receiver-manager.

287. (1) The appropriate official may appoint a receiver-manager under Part II for a corporation when any of the following circumstances apply to the corporation, namely:

(a) the realisable value of the corporation's assets is less than the aggregate of its liabilities and capital accounts or the corporation's financial condition suggests that it will shortly be in that circumstance;

(b) its business is not being conducted in accordance with this Act or, in the case of an international banking, trust or insurance corporation, its business is being conducted in an imprudent manner;

(c) the corporation refuses to submit to inspection of its records or operations by an auditor as required by section 158 or an inspector appointed under Division B of Part V; or

(d) its licence has been revoked or suspended under this Act.

(2) The receiver-manager appointed under subsection (1) may seize the management and control of the business of a corporation under this section by placing a notice to that effect on the premises of the registered office of the corporation and by putting agents of the appropriate official or receiver-manager into the offices of the corporation or by designating officers of the corporation to be officers of the receiver-manager or by both such measures.

(3) A corporation aggrieved by a seizure under this section may institute proceedings in the court for the recovery of the administration and control of the corporation; and the court may make such order in respect thereto as to it seems just and consistent with the purposes of this Act.

288. (1) Within thirty days after a receiver-manager has seized the administration and control of a corporation under this Division, the receiver-manager shall begin proceedings in the court for the liquidation and dissolution of the corporation under section 300 or for the re-organisation of the corporation under this Act, as the circumstances require.

Duties after seizure.

(2) On an application to the court by a receiver-manager of a corporation under this Division for the liquidation and dissolution of the corporation, the court has all the powers of the court under section 304 notwithstanding that the corporation is not able to pay or adequately provide for the discharge of all its obligations, but subject to section 286 and section 289.

PRIORITIES OF CLAIMS ON WINDING-UP

289. (1) In a winding up of a corporation under this Act, the following claims have, against the general assets of the corporation, priority over all the other debts of the corporation:

Priorities of claims.

(a) firstly, the necessary and reasonable expenses incurred in carrying out the winding-up;

(b) secondly, the wages and salaries of the officers and employees of the corporation that accrued during the three months immediately preceding the seizure of the administration and control of the corporation;

(c) thirdly, all parochial or other local rates due from the corporation and all taxes and other debts due from the corporation to the Crown, or held in trust for the Crown, at the time of the seizure of the administration and control of the corporation or at the time a voluntary liquidation is proposed;

(d) fourthly, the fees and assessments owing to the appropriate officer;

(e) fifthly, if the case requires, the savings and time deposits or trust accounts in amounts not exceeding twenty thousand dollars respectively; and

(f) sixthly, if the case requires, all the other deposits, trust accounts and policy claims, and all other claims filed within the time limited therefor pursuant to this Act.

(2) After payment of all other claims against the corporation, and, notwithstanding any other law, with interest at such rate as the court determines, all remaining claims against the corporation that were not filed within the time limited therefor pursuant to this Part may then be paid.

(3) When the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to claimants in that class, the amount available shall be distributed on a pro rata basis among the claimants in that class.

Left over assets.

290. The assets of a corporation being compulsorily wound up that remain after the final distribution to claimants pursuant to section 289 must be distributed among the shareholders of the corporation in proportion to their respective rights.

VOLUNTARY WINDING-UP

Dissolution by resolution.

291. A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors.

No property.

292. A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Effect of articles of dissolution.

293. (1) Articles of dissolution in the prescribed form must be sent to the Director in respect of a corporation described in section 291 or 292.

(2) Upon receipt of articles of dissolution under subsection (1) for a corporation, the Director must issue a certificate of dissolution in accordance with section 327.

(3) The corporation referred to in subsection (2) ceases to exist on the date shown in its certificate of dissolution.

294. (1) The directors of a corporation or a shareholder who is entitled to vote at an annual meeting of the corporation may make a proposal for the voluntary liquidation of the corporation.

(2) Notice of any meeting of shareholders of a corporation at which a voluntary liquidation and dissolution of the corporation is to be proposed must set out the terms of the liquidation and dissolution.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.

295. (1) A statement of intent to dissolve a corporation must be sent to the Director in the prescribed form.

(2) Upon receipt of a statement of intent to dissolve a corporation, the Director must, in accordance with section 327 issue a certificate of intent to dissolve.

(3) When a certificate of intent to dissolve a corporation is issued by the Director, the corporation shall cease to carry on business except to the extent necessary for its liquidation; but its corporate existence continues until the Director issues a certificate of dissolution of the corporation.

(4) After the issue of a certificate of intent to dissolve it, the corporation shall

(a) immediately cause notice of its intent to dissolve to be sent to each known creditor of the corporation;

(b) forthwith publish, in the *Gazette* and once in a newspaper published or distributed in Antigua and

Barbuda, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the corporation is registered or has a place of business at the time it sent the statement of intent to dissolve to the Director;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

**Supervised
liquidation.**

296. (1) The appropriate official or any interested person may, at any time during the liquidation of a corporation, apply to the court for an order that the liquidation be continued under the supervision of the court as provided in this Part; and upon the application the court may so order and make any further order it thinks fit.

(2) An applicant under this section other than the appropriate official must give the appropriate official notice of the application and he may appear and be heard in person or by counsel.

**Revocation of
intent.**

297. (1) At any time after the issue of a certificate of intent to dissolve a corporation and before the issue of a certificate of its dissolution, a certificate of intent to dissolve may be revoked by sending to the Director, in the prescribed form a statement of revocation of intent to dissolve the corporation, if the revocation is approved in the same manner as the resolution was approved under subsection (3) of section 294.

(2) Upon the receipt of a statement of revocation of an intent to dissolve a corporation, the Director must, in accordance with section 327 issue a certificate of revocation of intent to dissolve the corporation.

(3) On the date shown in the certificate of revocation of intent to dissolve a corporation, the revocation is effective and the corporation may continue to carry on its business.

298. (1) If a certificate of intent to dissolve a corporation has not been revoked and the corporation has complied with subsection (4) of section 295 the corporation must prepare articles of dissolution. **Right to dissolve.**

(2) The articles of dissolution in the prescribed form must be sent to the Director.

(3) Upon receipt under this section of the articles of dissolution of a corporation in the prescribed form, the Director must, in accordance with section 327 issue a certificate of dissolution of the corporation.

(4) The corporation ceases to exist on the date shown in its certificate of dissolution.

299. (1) Subject to subsections (2) and (3), where a corporation **Director's dissolution.**

(a) has not commenced business within three years after the date shown in its certificate of incorporation;

(b) has not carried on its business for three consecutive years; or

(c) has not had its name restored to the register within two years after the date on which it was struck off under section 335,

the Director may dissolve the corporation by issuing a certificate of dissolution under this section or he may apply to the court for an order dissolving the corporation, in which case section 304 applies.

(2) The Director must not dissolve a corporation under this section until he has

(a) given to the corporation one hundred and twenty days notice of his decision to dissolve the corporation;

(b) published in the *Gazette* notice of his decision to dissolve the corporation.

(3) Unless cause to the contrary has been shown or an order has been made by the court under section 304, the Director may, after the expiration of the period referred to in subsection (2), issue, in the prescribed form, a certificate of dissolution of the corporation.

(4) The corporation ceases to exist on the date shown in its certificate of dissolution.

**Court
dissolution.**

300. (1) The appropriate official or any interested person may apply to the court for an order dissolving a corporation, if the corporation

(a) has failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;

(b) has contravened section 19, 134, 135 or 146; or

(c) has procured any certificate under this Act by misrepresentation.

(2) An applicant under this section other than the Director must give the Director notice of the application; and the Director may appear and be heard in person or by counsel.

(3) Upon an application under this section or section 299, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court; and the court may make any other order it thinks fit.

(4) Upon receipt of an order under this section, section 299 or section 303, the Director must

(a) if the order is to dissolve the corporation, issue in the prescribed form a certificate of its dissolution; or

(b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue, in the prescribed form a certificate of intent to dissolve the corporation and publish a notice of that intent in the *Gazette*.

(5) The corporation ceases to exist on the date shown in its certificate of dissolution.

301. (1) The court may order the liquidation and dissolution of a corporation or any of its affiliated corporations upon the application of a shareholder **Further grounds.**

(a) if the court is satisfied that, in respect of a corporation or any of its affiliates,

- (i) any act or omission of the corporation or any of its affiliates,
- (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of any security holder, creditor, director or officer; or

(b) if the court is satisfied that

- (i) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred; or
- (ii) it is just and equitable that the corporation be liquidated and dissolved.

(2) Upon an application under this section, the court may make such order under this section or section 204 as it thinks fit.

(3) Sections 205 and 206 apply to an application under this section.

302. (1) An application to the court to supervise a voluntary liquidation and dissolution under section 294 must state the reasons the court should supervise the liquidation and dissolution; and the reasons must be verified by the affidavit of the applicant. **supervision of court.**

(2) If the court makes an order applied for under section 300, the liquidation and dissolution of the corporation must be continued under the supervision of the court in accordance with this Act.

**Dissolution
reasons.**

303. (1) An application to the court under section 285 or 296 must state the reasons the corporation should be liquidated and dissolved; and the reasons must be verified by the affidavit of the applicant.

(2) Upon an application under section 300, the court may make an order requiring the corporation and any person having an interest in the corporation or claim against it to show cause, at a time and place specified in the order, which must not be less than four weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) Upon an application to supervise a voluntary liquidation and dissolution or to order the dissolution of a corporation, the court may order the directors and officers of the corporation to furnish to the court all material information known to or reasonably ascertainable by them, including without limiting the generality of the foregoing,

(a) the financial statements of the corporation;

(b) the name and address of each shareholder of the corporation; and

(c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

(4) A copy of an order made under subsection (2) must

(a) be published, in a newspaper published or distributed in Antigua and Barbuda, as directed in the order, at least once in each week before the time appointed for the hearing; and

(b) be served upon the Director and each person named in the order.

(5) Publication and service of an order under this section must be effected by the corporation or by such other person and in such manner as the court may order.

304. In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including, without limiting the generality of the foregoing, Court powers.

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without bonding, fixing his remuneration and replacing a liquidator;

(c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;

(d) an order determining the notice to be given to an interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claim made against the corporation;

(f) an order, at any stage of the proceedings, restraining the directors and officers of the corporation from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation except as permitted by the court;

(g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder of the corporation

(i) to the corporation, or

(ii) for an obligation of the corporation;

(h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of amounts for such purpose, and deter-

mining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the corporation;

(j) upon the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;

(l) subject to section 309, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) upon the application of any director, officer, shareholder or debenture holder, creditor or the liquidator

(i) an order staying the liquidation on such terms and conditions as the court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the corporation all its remaining property;

and

(o) after the liquidator has rendered his final accounts to the court, an order dissolving the corporation.

**Cessation of
business.**

305. (1) Where a court makes an order for the liquidation of a corporation, then, from the date stated in the order,

(a) the corporation shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors and shareholders cease and are vested in the liquidator, except as specifically authorised by the court.

(2) The liquidator may delegate any of the powers vested in him by paragraph (b) of subsection (1) to the directors or shareholders.

306. (1) When making an order for the liquidation of a corporation or at any time thereafter, the court may appoint any person, including a director, officer or shareholder of the corporation, as liquidator of the corporation. Appointment of liquidator.

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

307. A liquidator must

Duties of liquidator.

(a) forthwith after his appointment, give notice of his appointment to the Director and to each claimant and creditor of the corporation known to the liquidator;

(b) forthwith give, by publication in the Gazette and by insertion once a week for two consecutive weeks in a newspaper published or distributed in Antigua and Barbuda, notice

- (i) requiring any person indebted to the corporation to render an account and pay to the liquidator at the time and place specified, any amount owing,
- (ii) requiring any person possessing property of the corporation to deliver it to the liquidator at the time and place specified, and
- (iii) requiring any person having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;

and the liquidator must take reasonable steps to give notice of his appointment in every jurisdiction where the corporation is registered or has a place of business and to require persons described in subparagraphs (i) to (iii) to take similar action;

(c) take into his custody and control the property of the corporation;

(d) open and maintain a trust account for the moneys of the corporation received and paid out by him;

(e) keep accounts of the moneys of the corporation received and paid out by him;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;

(g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;

(h) deliver to the court and to the Director, at least once in every twelve-month period after his appointment or more often as the court may require, financial statements of the corporation in the form required by section 142 or in such other form as the liquidator may think proper or as the court may require; and

(i) after his final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

Powers of liquidator.

308. (1) A liquidator may

(a) retain solicitors, accountants, engineers, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;

(c) carry on the business of the corporation as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the corporation;

(e) do all acts and execute any documents in the name and on behalf of the corporation;

(f) borrow money on the security of the property of the corporation;

(g) settle or compromise any claims by or against the corporation;

(h) make financial provision in respect of the custody of the documents and records of the corporation after dissolution; and

(i) do all other things necessary for the liquidation of the corporation and the distribution of its property.

(2) A liquidator incurs no liability as liquidator if he relies in good faith upon

(a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation; or

(b) an opinion, a report or a statement of a solicitor, accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or mis-appropriated any property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or mis-appropriated property of the corporation, the court may order that person to restore the property or pay compensation to the liquidator.

(5) A liquidator must pay the costs of liquidation out of the property of the corporation and must pay or make adequate provision for all claims against the corporation.

Final accounts.

309. (1) Within one year after his appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator must apply to the court

(a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distributing should not be made.

(3) A liquidator must give to

(a) the appropriate official,

(b) each inspector appointed under section 344,

(c) each shareholder, and

(d) any person who provided a security or fidelity bond for the liquidator,

notice of the liquidator's intention to make application under subsection (1); and he must publish a notice thereof in a newspaper published or distributed in Antigua and Barbuda or as otherwise directed by the court.

(4) If the court approves the final accounts rendered by a liquidator, the court must make an order

(a) directing the Director to issue a certificate of dissolution;

(b) directing the custody or disposal of the documents and records of the corporation; and

(c) subject to subsection (5), discharging the liquidator.

(5) The liquidator must forthwith send a certified copy of the order referred to in subsection (4) to the Director.

(6) Upon receipt of the order referred to in subsection (4), the Director must issue a certificate of dissolution in accordance with section 327.

(7) The corporation ceases to exist on the date shown in its certificate of dissolution.

310. (1) If, in the course of liquidation of a corporation, the shareholders resolve or the liquidator proposes **Money distribution.**

(a) to exchange all or substantially all the property of the corporation for securities of another body corporate for distribution to the shareholders, or

(b) to distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

(2) Upon an application under subsection (1), the court may order

(a) that all the property of the corporation be converted into and distributed in money, or

(b) that the claims of any shareholder applying under this section be satisfied by a distribution in money, in which case section 197 applies.

311. A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for six years following the date of the company's dissolution or until the expiry of such other shorter period as may be ordered under subsection (4) of section 309. **Record custody.**

312. (1) In this section, "shareholder" includes the legal representative of a shareholder. **Continuation of actions.**

(2) Notwithstanding the dissolution of a corporation under this Act

(a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available to satisfy the judgment or order.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 67 or 74.

(4) Notwithstanding the dissolution of a corporation, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution; but an action to enforce that liability may not be brought after two years from the date of the dissolution of the corporation.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit; and, if the plaintiff establishes his claim, the court may refer the proceedings to a referee or other officer of the court, who may

(a) add as a party to the proceedings before him each person found by the plaintiff to have been a shareholder;

(b) determine, subject to subsection (4), the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

313. (1) Upon the dissolution of a corporation, the portion of the property distributable to a creditor or shareholder who cannot be found must be converted into money and paid into the Consolidated Fund. **Unknown claimants.**

(2) A payment under subsection (1) is satisfaction of the debt or claim of the creditor or shareholder.

(3) If, at any time within six years after the date on which any money is paid into the Consolidated Fund pursuant to subsection (1), any person establishes his entitlement to the money so paid into the Consolidated Fund, he is entitled to be paid an equivalent amount out of the Consolidated Fund.

314. (1) Subject to subsection (2) of section 312 and section 313, any property of a corporation that has not been disposed of at the date of the corporation's dissolution vests in the Crown. **State vested with property.**

(2) When a corporation is revived under section 315 any property (other than money) that was vested in the Crown pursuant to subsection (1) on the dissolution of the corporation and that has not been disposed of must be returned to the corporation upon its revival.

(3) The corporation is entitled to be paid out of the Consolidated Fund

(a) any money received by the Crown pursuant to subsection (1) in respect of the corporation; and

(b) if property other than money vested in the Crown pursuant to subsection (1) in respect of the corporation and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in the Crown, and

(ii) the amount realised by the Crown from the disposition of that property.

REVIVING CORPORATIONS

Revival of corporation.

315. (1) When a corporation has been dissolved under this Part, any interested person may apply to the Director to have the corporation revived.

(2) If the Director approves the application for the revival of a corporation, articles of revival in the prescribed form may be sent to the Director, who must thereupon issue a certificate of revival for the corporation in accordance with section 327.

(3) A corporation is revived on the date shown in its certificate of revival; and thereafter the corporation, subject to such reasonable terms as may be imposed by the Director and to any rights acquired by any person after the dissolution of the corporation, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

PART V

ADMINISTRATION AND GENERAL

DIVISION A: DIRECTOR'S DUTIES AND POWERS

The Director

Responsibility.

316. (1) There is hereby established a public office to be called the Director of International Business Corporations.

(2) The Director is, under the direction and control of the Minister, responsible for the administration of this Act.

(3) A seal may be prescribed by the Minister for use by the Director in the performance of his duties.

Service upon the Director.

317. A document may be served upon the Director by leaving it at the office of the Director or by sending it by registered post addressed to the Director at his office.

THE REGISTER

318. The Director must maintain a Register of International Business Corporations in which to keep the name of every corporation **Register of IBC's.**

(a) that is

(i) incorporated under this Act;

(ii) continued as a corporation under this Act;

(iii) restored to the register pursuant to this Act,

and

(b) that has not been subsequently struck off that register.

319. (1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations to be sent to the Director, except a report sent to him under subsection (2) of section 344. **Inspection of register.**

(2) The Director must, upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Director under this Act, except a report received by him pursuant to subsection (2) of section 344.

(3) If the records maintained by the Director are prepared and maintained in other than a written form,

(a) the Director must furnish any copy required to be furnished under this Act in an intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Director, is admissible in evidence to the same extent as the original written records would be.

NOTICES AND DOCUMENTS

320. (1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a **Notices and service, etc.**

shareholder or director of a corporation may be sent by registered post addressed to, or may be delivered personally to,

(a) the shareholder at his latest address as shown in the records of the corporation or its transfer agent; and

(b) the director at his latest address as shown in the records of the corporation or in the latest notice filed under section 67 or 74.

(2) A director named in a notice sent by a corporation to the Director under section 67 or 74 and filed by the Director is, for the purposes of this Act, a director of the corporation referred to in the notice.

Presumption of receipt.

321. A notice or document sent in accordance with section 320 to a shareholder or director of a corporation is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Undelivered documents.

322. If a corporation sends a notice or document to a shareholder in accordance with section 320 and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the corporation need not send any further notices or documents to the shareholder until he informs the corporation in writing of his new address.

Notice waiver.

323. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate by corporation.

324. A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

325. When introduced as evidence in any civil, **Evidentiary value.**
criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in section 298;

(b) a certified extract from a register of shareholders or debenture-holders of a corporation; or

(c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a corporation;

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

326. Where a notice or document is required by this **Copies.**
Act to be sent to the Director, he may accept a photostatic or photographic copy of the notice or document.

327. (1) In this section, "statement" means a statement of intent to dissolve referred to in section 295 and a statement of revocation of intent to dissolve referred to in section 297. **Filed articles.**

(2) Where this Act requires that articles or a statement relating to a corporation be sent to the Director, unless otherwise specifically provided,

(a) two copies, in this section called "duplicate originals", of the articles or the statement must be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by the incorporator; and

(b) upon receiving duplicate originals of any articles or statement that conform to law, and any other required documents and the prescribed fees, the Director must

(i) endorse on each of the duplicate originals the word "registered" and the date of the registration;

(ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement;

- (iii) file a copy of the certificate and attached articles or statement;
- (iv) send to the corporation or its representative the original certificate and attached articles or statement; and
- (v) publish in the *Gazette* notice of the issue of the certificate.

(3) A certificate referred to in subsection (2) and issued by the Director may be dated as of the day he receives the articles, statement or court order pursuant to which the certificate is issued or as of any later date specified by the court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically reproduced on the certificate.

Alteration of documents.

328. The Director may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document or by the representative of that person.

Correction of documents.

329. (1) If a certificate that contains an error is issued to a corporation by the Director, the directors or shareholders of the corporation must, upon the request of the Director, pass the resolutions and send to the Director the documents required to comply with this Act, and take such other steps as the Director may reasonably require; and the Director may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

(3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Director must forthwith give notice of the correction in the *Gazette*.

Proof of documents.

330. (1) The Director may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Director to be verified may be verified by affidavit or statutory declaration.

(3) The Director may require of a body corporate the authentication of a document; and the authentication may be signed by the secretary, or any director or authorised person or by the solicitor for the body corporate.

331. The Director need not produce any document of a prescribed class after six years from the date he received it. **Retention of documents.**

332. (1) The Director may furnish any person with a certificate stating **Director's certificate.**

(a) that a body corporate has or has not sent to the Director a document required to be sent to him pursuant to this Act;

(b) that a name, whether that of a corporation or not, is or is not on the register; or

(c) that a name, whether that of a corporation or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Director to issue a certificate or to certify any fact, the certificate or the certification must be signed by the Director or by his deputy.

(3) Except in a proceeding under section 300 to dissolve a corporation, a certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified without proof of the signature or official character of the person appearing to have signed it.

333. (1) The Director may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document **Refusal power.**

(a) contains matter contrary to the law;

(b) by reason of any omission or error in description, has not been duly completed;

(c) does not comply with the requirements of this Act;

- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Director may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Director is accompanied with a statutory declaration by a solicitor that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Director may accept the declaration as sufficient proof of the facts therein declared.

Form of filing.

334. Every document sent to the Director must be in typed or printed form.

REMOVAL FROM REGISTER

Striking off register.

335. (1) The Director may strike a corporation off the register, if

- (a) the corporation fails to send any return, notice, document or prescribed fee to the Director as required pursuant to this Act;
- (b) the corporation is dissolved;
- (c) the corporation is amalgamated with one or more other corporations or bodies corporate;
- (d) the corporation does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 339 or
- (e) the registration of the corporation is revoked pursuant to this Act.

(2) Where the Director is of the opinion that a corporation is in default under paragraph (a) of subsection (1), he must send it a notice advising it of the default and stating that, unless the default is remedied within thirty days after the date of the notice, the corporation will be struck off the register.

(3) Section 337 applies *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Director may strike the corporation off the register and publish a notice thereof in the *Gazette*.

(5) When a corporation is struck off the register, the Director may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

336. Where a corporation is struck off the register, the liability of the corporation and of every director, officer or shareholder of the corporation continues and may be enforced as if it had not been struck off the register. **Liability continues.**

SERVICE

337. A notice or document may be served on a corporation **Service on corporation.**

(a) by leaving it at, or sending it by registered post addressed to, the registered office of the corporation; or

(b) by personally serving any director, officer, receiver, receiver-manager, liquidator or resident agent of the corporation.

CORPORATION NAMES

338. The Director may, upon request and upon payment of the prescribed fee, reserve for ninety days a name for an intended corporation or for a corporation about to change its name. **Reservation of name.**

339. The name of a corporation **Prohibited name.**

(a) must not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and

-
- (i) if required by the Director in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within six months after the filing of the articles by which the name is acquired, or
 - (ii) if required by the Director in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within six months after the filing of the articles by which the name is acquired;
 - (b) must not be identical to the name of a body corporate incorporated under the laws of Antigua and Barbuda;
 - (c) must not suggest or imply a connection with Antigua and Barbuda or the Government of Antigua and Barbuda or of any Ministry, department, branch, bureau, service, agency or activity of Antigua and Barbuda, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
 - (d) must not suggest or imply a connection with a political party or a leader of a political party;
 - (e) must not suggest or imply a connection with a university or a professional association recognised by the laws of Antigua and Barbuda, unless the university or professional association concerned consents in writing to the use of the proposed name; and
 - (f) must not be a name that is prohibited by the regulations.

Refusal of articles.

340. The Director may refuse to accept articles of incorporation or articles of continuation for a corporation or body corporate or to register articles amending the name of a corporation if

- (a) the name is not distinctive because
 - (i) it is too general;
 - (ii) it is descriptive only of the quality, function or other characteristic of the goods or services

in which the corporation deals or intends to deal; or

(iii) primarily it is only a geographic name used alone;

unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;

(b) the name is deceptively inaccurate in describing

(i) the business, goods or services in association with which it is proposed to be used;

(ii) the conditions under which the goods or services will be produced or supplied;

(iii) the persons to be employed in the production or supply of those goods or services; or

(iv) the place of origin of those goods and services;

(c) it is likely to be confusing with that of a corporation that was dissolved; or

(d) it is, in the opinion of the Director, for any reason, objectionable.

341. If two or more corporations amalgamate, the amalgamated corporation may have

(a) the name of one of the amalgamating corporations;

(b) a distinctive combination that is not confusing of the names of the amalgamating corporations; or

(c) a distinctive new name that is not confusing.

342. Where a corporation has been revived under this Act, if, between the date of its dissolution and the date of its revival, another corporation has been granted a name that is likely to be confused with the name of the revived corporation, the Director may require as a condition of its revival that the revived corporation does not carry on business or, if it seeks to carry on business, that it changes its name.

DIVISION B: INVESTIGATIONS

INVESTIGATION

Investigation
order.

343. (1) A shareholder of a corporation, the Director or an appropriate official, may apply, ex parte or upon such notice as the court may require, to the court for an order directing that an investigation be made of the corporation and any of its affiliates;

(2) If, upon an application under subsection (1) in respect of a corporation, it appears to the court that

(a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of a security holder;

(c) the corporation or any of its affiliates was formed, incorporated or continued for a fraudulent or unlawful purpose; or

(d) persons concerned with the formation, incorporation, continuance, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

the court may order that an investigation be made of the corporation and any of its affiliates.

(3) If a security holder makes an application under subsection (1), he must give the Director reasonable notice thereof; and the Director is entitled to appear and be heard in person or by a solicitor.

(4) If, within six months after the continuance under this Act of a corporation that had exercised an option to continue under this Act pursuant to section 186, the government of the country from which the corporation was continued requests the Director to make an application under section 343 for an investigation of the corporation, the Direc-

tor must do so and must present to the court all the reasons and evidence adduced by that country to support the application.

(5) An ex parte application under this section must be heard in camera.

(6) No person shall publish anything relating to an ex parte proceeding except with the authorisation of the court or the written consent of the corporation that is being or to be investigated.

344. (1) In connection with an investigation under this Division in respect of a corporation, the court may make any order it thinks fit, including without limiting the generality of the foregoing, **Court powers.**

(a) an order to investigate;

(b) an order appointing an inspector, who may be the Director, and fixing the remuneration of the inspector and replacing the inspector;

(c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(d) an order authorising an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(e) an order requiring any person to produce documents or records to the inspector;

(f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;

(g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;

(h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(i) an order requiring an inspector to make an interim or final report to the court;

(j) an order determining whether a report of an inspector should be published and, if so, ordering the Director to publish the report in whole or in part or to send copies to any person the court designates;

(k) an order requiring an inspector to discontinue an investigation; or

(l) an order requiring the corporation to pay the costs of the investigation.

(2) An inspector must send to the Director a copy of every report made by the inspector under this Division.

Inspector's powers.

345. (1) An inspector under this Division has the powers set out in the order appointing him.

(2) An inspector must upon request produce to an interested person a copy of any order made under subsection (1) of section 344.

In camera hearing.

346. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Division be heard in camera and for direction on any matter arising in the investigation.

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

Incriminating evidence.

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

Cap. 324.

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

Privilege absolute.

349. Nothing in this Division affects the privilege that exists in respect of a solicitor and his client.

Client privilege.

INQUIRIES

350. The Director may make of any person any inquiries that relate to compliance with this Act by any persons.

Inquiries.

DIVISION C: REGULATIONS

351. (1) The Minister may make such regulations as are required for the better administration of this Act and, in particular, without limiting the generality of the foregoing, the Minister may make regulations

Regulations.

(a) prescribing any matter required or authorised by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Director is required or authorised to take under this Act, and prescribing the amount thereof;

(c) prescribing the format and contents of returns, notices or other documents required to be sent to the Director or to be issued by him;

(d) prescribing the rules with respect to exemptions permitted by this Act;

(e) respecting the names of corporations or classes thereof;

(f) respecting the authorised capital of corporations;

(g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of corporations;

(h) respecting the designation of classes of shares; and

(i) respecting any other matter required for the efficient administration of this Act.

(2) The court may make such regulations and rules of court as it considers necessary for the better administration of Part IV.

DIVISION D: OFFENCES AND PENALTIES

Name of offence. **352.** A corporation that contravenes section 12 is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

Reports. **353.** (1) A person who makes or assists in making a report, return, notice or other document

(a) that is required by this Act or the regulations to be sent to the Director, and appropriate official or any other person, and

(b) that

(i) contains an untrue statement of a material fact, or

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

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both.

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

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to

a fine of five thousand dollars or to imprisonment for a term or six months or to both.

354. (1) A person is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for a term of six months or to both **Specific offences.**

(a) who without reasonable cause contravenes section 134;

(b) who, being a proxy holder or alternate proxy holder, fails without reasonable cause to comply with the direction of a shareholder from whom he holds the proxy;

(c) who, being a registrant within the meaning of this Act, knowingly contravenes section 126;

(d) who, being an auditor or former auditor of a corporation, contravenes subsection (1) of section 156 without reasonable cause;

(e) who, being a director or officer of a corporation knowingly contravenes section 159; or

(f) who, being a person described in section 311, fails without reasonable cause to produce any documents or records within any period during which he is liable under that section to produce that document or record.

(2) Where the person who is guilty of an offence under subsection (1) is a body corporate, then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both.

(3) Any person who without reasonable cause contravenes section 244 or 254 is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of one year or to both.

Corporate offences.

355. (1) A corporation is guilty of an offence and liable on summary conviction to a fine of five thousand dollars, if

(a) the corporation knowingly permits any of its securities to be made part of a distribution to the public within or outside Antigua and Barbuda in contravention of section 365;

(b) the management of the corporation without reasonable cause fails to comply with subsection (1) of section 139; or

(c) the corporation without reasonable cause fails to do all that is reasonably possible to prevent any of the securities of the corporation from becoming part of a distribution to the public within Antigua and Barbuda or elsewhere in contravention of section 365.

(2) When a corporation is guilty of an offence under this section, any director or officer of the corporation who knowingly authorised, acquiesced in or permitted the contravention is also guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months or to both.

General offence.

356. Every person who, without reasonable cause contravenes, a provision of this Act or the regulations is guilty of an offence and, if no punishment is elsewhere in this Act provided for that offence, is liable on summary conviction to a fine of five thousand dollars.

Order to comply.

357. When a person is convicted of an offence under this Act or the regulations, the court or a court of summary jurisdiction in which proceedings in respect of the offence are taken, may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation.

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

359. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act. **Civil remedies unaffected.**

DIVISION E: APPROPRIATE OFFICIALS

360. (1) There is hereby established a public office to be known as the Supervisor of International Banks and Trust Corporations, with such powers and duties as are conferred or imposed upon that office by this Act or any other statute. **Supervisor and Superintendent.**

(2) There is hereby established a public office to be known as the Superintendent of International Insurance Corporations with such powers and duties as are conferred or imposed upon that office by this Act or any other statute.

(3) Only a person knowledgeable in the international banking and trust business may be appointed to the office of the Supervisor of International Banks and Trust Corporations; and only a person knowledgeable in the international insurance business may be appointed Superintendent of International Insurance Corporations.

(4) Appointments to the offices established by this section may be made in the manner provided by law; and such personnel as are necessary for the effective performance of those offices must be made available in the manner provided by law.

(5) When no office in the public service is designated the appropriate official in respect of any international trade or business other than an international bank, trust or insurance business, the Director is the appropriate official for the purposes of this Act for the international trade or business.

361. (1) With the approval of the Minister of Finance, the Supervisor may appoint not less than three persons with experience and knowledge in the banking or trust businesses to constitute an advisory committee on international banking and trust businesses. **Advisory committees.**

(2) With the approval of the Minister of Finance, the Superintendent may appoint not less than three persons with experience and knowledge in the international insurance business to constitute an advisory committee on international insurance business.

(3) An advisory committee may perform such functions as the regulations prescribe to enable the Supervisor and Superintendent, respectively, to perform the functions of that office as efficiently, effectively and economically as circumstances permit; and the committees must keep the Supervisor and Superintendent, respectively, informed of matters and developments that might affect the public interest of Antigua and Barbuda in the administration of this Act.

DIVISION F: CONSTRUCTION AND INTERPRETATION

CORPORATE RELATIONSHIPS

Affiliated corporations.

362. For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

"Control" of corporation.

363. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

"Holding" and "subsidiary".

364. For the purposes of this Act,

(a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

PUBLIC DISTRIBUTION OF CORPORATE
SECURITIES

365. For the purposes of this Act,

**"Distribution"
to public.**

(1) no security of a body corporate shall be distributed to the public unless any applicable requirements with respect to the filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take over bid, circular or similar instrument within Antigua and Barbuda have been met;

(2) the securities of a corporation that are issued upon a conversion of other securities of a corporation, or in exchange for other securities, are subject to sub-section (1) if any of those other securities were subject to sub-section (1).

366. (1) Any reference in this Act to offering securities to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person offering them or inviting an offer for them.

**"offer" to
public.**

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the securities becoming available for acquisition by persons other than those receiving the offer or invitation, or can otherwise be regarded as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a corporation prohibiting invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the security holders or employees of the corporation.

LEGISLATIVE EXPRESSIONS

367. (1) Where the auxiliary "shall" is used in a "shall", use of provision of this Act

(a) to require that a person do or refrain from doing some act, matter or thing; or

(b) to require that some act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time;

the provision is imperative and default in complying with it constitutes a contravention of this Act.

(2) Unless otherwise expressly provided, default in complying with an imperative provision referred to in subsection (1) does not invalidate any act, matter or thing done in contravention of the provision nor prevent the later doing of that act, matter or thing in accordance with the provision.

(3) Compliance with a provision referred to in subsection (1) is enforceable in any court of competent jurisdiction notwithstanding that the contravention of the provision is punishable or has been punished pursuant to statute.

"May", use of.

368. (1) The auxiliary "may" is permissive, empowering and enabling; and when used in the negative form, it negatives any permission, power or capacity to do the act, matter or thing in respect of which the auxiliary is used so that, unless the contrary is expressly provided, the act, matter or thing is to be construed, so far as it can be done without allowing the statute to be made an instrument of fraud, as not being capable of being done in law or in fact.

(2) When the exercise of a power is subject to any qualification or condition, the power is not exercised unless the qualification or condition is met or complied with.

(3) Unless otherwise expressly provided, the doing of any act, matter or thing pursuant to a permission or power is within the sole and absolute discretion of the person to whom the permission or power is given.

"Must", use of.

369. (1) Where the auxiliary "must" is used in a provision of this Act,

(a) to require that a person do or refrain from doing some act, matter or thing,

(b) to require that an act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time, or

(c) to prescribe a qualification or condition for some purpose, office or status,

the provision imposes a duty or obligation upon the person required to comply with it.

(2) Default in complying with the duty or obligation referred to in subsection (1) does not constitute an offence under this Act unless the default is made an offence by a provision of this Act expressly mentioning the act, matter or thing or the duty or obligation or the provision imposing the duty or obligation.

(3) Compliance with any duty or obligation is enforceable in any court of competent jurisdiction.

(4) A person aggrieved by a breach of a duty or obligation referred to in subsection (1) may recover, by action in the court, any damages suffered by him as a direct result of the breach; but this subsection does not apply if the breach is an act or omission

(a) in the performance of a function of a legislative nature or of a judicial nature; or

(b) in the performance in good faith of a ministerial function by a Minister or employee of the State in the administration of this Act.

(5) When a provision of this Act uses the auxiliary "must" to prescribe any qualification or condition for some purpose, office or status, the qualification or condition is mandatory and default in complying with it, unless it is otherwise provided,

(a) frustrates the purpose,

(b) vitiates the status;

(c) nullifies the appointment to the office, or

(d) vacates the tenure in the office, to which the qualification or condition is attached, but without affecting the operation of subsections (2) to (4).

CORPORATE AND OTHER EXPRESSIONS

Definition of technical words.

370. In this Act,

(a) "affairs" means, in relation to any corporation or other body corporate, the relationship among the corporation or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the corporations or other bodies corporate;

(b) "affiliate" means an affiliated corporation or affiliated body corporate within the meaning of section 362;

(c) "associate" when used to indicate a relationship with any person means

(i) a corporation or body corporate of which that person beneficially owns or controls, directly or indirectly, securities convertible into shares, that carry more than twenty per cent of the voting rights

(A) under all circumstances,

(B) by reason of the occurrence of an event that has occurred and is continuing, or

(C) by reason of a currently exercisable option or right to purchase those shares or those convertible securities;

(ii) a partner of that person acting on behalf of the partnership of which they are partners;

(iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(iv) a spouse of that person;

(v) a child, step-child or adopted child of that person; and

- (vi) a relative of that person or of his spouse if that relative has the same residence as that person;
- (d) "auditor" includes a partnership of auditors;
- (e) "beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
- (f) "body corporate" includes a corporation within the meaning of subsection (1) of section 2 and any other body corporate wherever or however incorporated, other than a corporation sole;
- (g) "corporate instruments" includes any statute, charter, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;
- (h) "debenture" includes debenture stock and any other instrument evidencing an obligation or guarantee, whether secured or not;
- (i) "director", in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called, and "directors" and "board of directors" include a single director;
- (j) "incorporator" means, in relation to a corporation, a person who signs the articles of incorporation of the corporation;
- (k) "liability" includes, in relation to a corporation, any debt of the corporation that arises under
 - (i) section 50,
 - (ii) subparagraph (b) of section 185, or
 - (iii) paragraph (f) or (g) of subsection (3) of section 204;
- (l) "ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

(m) "record" includes any register, book or other record that is required to be kept by a corporation or other body corporate;

(n) "redeemable share" means a share issued by a corporation

(i) that the corporation can purchase or redeem upon demand of the corporation, or

(ii) that the corporation is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

(o) "security interest" means a security interest within the meaning of section 94;

(p) "send" includes deliver;

(q) "series", in relation to shares, means a division of a class of shares;

(r) "share" includes stock;

(s) "shareholder", in relation to a corporation, includes

(i) the personal representatives of a deceased shareholder;

(ii) the trustee in bankruptcy of a bankrupt shareholder; and

(iii) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of shareholders, or, if two or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

(t) "special resolution" means a resolution that

(i) is passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of the resolution, or

(ii) is signed by all the shareholders entitled to vote on the resolution.

PURPOSES OF ACT

371. (1) This Act is to receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its purposes. **Construing Act.**

(2) The purposes of this Act are

(a) to encourage the development of Antigua and Barbuda as a responsible off-shore financial, trade and business centre;

(b) to provide incentives by way of tax exemptions and benefits for off-shore business carried on from within Antigua and Barbuda; and

(c) to enable the citizens of Antigua and Barbuda to share in the ownership, management and rewards of any business activity resulting therefrom.

CONSEQUENTIAL AMENDMENTS

372. (1) Where a provision of this Act conflicts with a provision of any other Act, the provision of this Act prevails. **Application of other Acts.**

(2) To the extent provided under this section but without limiting the generality of any provision of Part III, the following Acts do not apply in respect of international trades or businesses or to corporations governed by this Act:

(a) the Bankers Books (Evidence) Act applies in respect of an international banking corporation when under this Act the books of that corporation are admissible in evidence without adversely affecting the secrecy requirements of this Act in relation to the depositors of the corporation:

(b) the Banking Act, does not apply to an international banking corporation;

(c) the Companies Act does not apply to a corporation;

(d) the Foreign Currency Levy Act, does not apply to transactions by a corporation in the ordinary course of its international trade or business in any currency that is foreign in every country of the Caricom region;

(e) the Insurance (Licence) Act, does not apply in respect of any International insurance business transacted by an international insurance corporation;

(f) the International Business Companies (Exemption from Income Tax) Act, does not apply to a corporation;

(g) the Registration and Records Act does not, except in respect of lands in Antigua and Barbuda, apply in respect of deeds or other instruments made in Antigua and Barbuda in the ordinary course of business of a corporation;

(h) without limiting the generality of the tax exemptions provided for a corporation in Part III, the Telecommunications Tax Act, does not apply in respect of an international trade or business;

(i) the Travel Tax Act, does not apply to employees of corporations, if they are exempted under that Act by the Minister.

SCHEDULE I

INTERNATIONAL BUSINESS CORPORATIONS ACT

ARTICLES OF INCORPORATION
(SECTION 5 (2))

1. Name of Corporation
2. Where the registered office is to be situated.
3. The classes and any number of shares the corporation is authorized to issue.
4. Restrictions if any of share transfers.
5. Number (or minimum and maximum number) of directors.
6. Restrictions on business the corporation may carry on.
7. Other Divisions, if any.
8. Incorporator(s):

NAMES

ADDRESSES

SIGNATURE

FOR MINISTRY USE ONLY

CORPORATION NO.

FILED:

FORM I

SCHEDULE II

INTERNATIONAL BUSINESS CORPORATIONS ACT

ARTICLES OF CONTINUANCE

(SECTIONS 176 (1) AND 182 (1)) .

1. Name of Corporation
2. Where the registered office is to be situated.
3. The classes and any number of shares the corporation is authorized to issue.
4. Restrictions if any of share transfers.
5. Number (or minimum and maximum number) of Directors.
6. Restriction on business the corporation may carry on.

FOR MINISTRY USE ONLY

CORPORATION NO.

FILED:

FORM II
