M O N T S E R R A T

COMPANIES BILL 2023

No. 14 of 2023

ARRANGEMENT OF SECTIONS

I ASSENT

Governor

DATE:

M O N T S E R R A T

No. 14 of 2023

A BILL FOR

AN ACT TO REPEAL AND REPLACE THE COMPANIES ACT.

BE IT ENACTED by The King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows—

PART 1—PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Companies Act, 2023.

(2) This Act comes into force on a date appointed by the Governor acting on the advice of Cabinet.

2. Interpretation

(1) In this Act—

"affiliate" has the meaning specified in subsection (4);

"approved form" means a form approved by the Commission in accordance with section 383;

"articles" means the original, amended or restated articles of incorporation of a company;

"asset" includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to property;

"bearer share" means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

"board" in relation to a company, means—

(a) the board of directors, committee of management, council or other governing authority of the company; or

(b) if the company has only one director, that director;

"class" in relation to shares, means a class of shares each of which has attached to it the rights, privileges, limitations and conditions specified for that class in the articles;

"commencement date" means the date that this Act comes into force;

"Commission" means the Financial Services Commission preserved and continued under the Financial Services Commission Act (Cap. 11.02);

"company" means—

(a) a company incorporated under section 6;

(b) a company continued as a company under section 204;

(c) a consolidated company within the meaning of section 190; or

(d) a former Act company re-registered as a company under Schedule 2;

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside Montserrat in accordance with section 206;

"company number" means the number allotted to a company on its incorporation or continuation or to a consolidated company;

"continued" means continued under section 204;

"consolidation" has the meaning specified in section 190;

"consolidated company" has the meaning specified in section 190;

"country" includes a territory;

"Court" means the High Court;

"court" means a court of Montserrat of competent jurisdiction;

"director" in relation to a company, a foreign company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

"distribution" has the meaning specified in section 51;

"document" means a document in any form and includes—

(a) any writing or printing on any material;

(b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;

(c) books and drawings; and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or

more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced, and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;

"eligible insolvency practitioner" means a person who meets the prescribed criteria for an insolvency practitioner;

"file" in relation to a document, means to file the document with the Registrar;

"financial institution" has the meaning specified in the Financial Services Commission Act;

"Financial Services Commission Act" means the Financial Services Commission Act (Cap. 11.02);

"foreign company" means a body corporate incorporated, registered or formed outside Montserrat;

"former Act" means the Companies Act (Act No. 25 of 1998), the International Business Companies Act (Cap.11.13) or the Limited Liability Companies Act (Cap. 11.14);

"former Act company" means a company incorporated, formed, continued or registered under a former Act, but excludes an external company incorporated outside Montserrat registered under section 349 of the former Companies Act;

"former Companies Act" means the Companies Act (Act No. 25 of 1998);

"group" in relation to a company (the **"first company"**), means the first company and any other company that is—

(a) a parent of the first company;

(b) a subsidiary of the first company;

(c) a subsidiary of a parent of the first company; or

(d) a parent of a subsidiary of the first company;

"guarantee member" in relation to a company limited by guarantee, means—

(a) a person whose name is entered in the register of members as a guarantee member;

(b) until the person's name is entered in the register of members, a person named as an incorporator in an application to incorporate a company limited by guarantee, at the time of the incorporation of the company;

"International Business Companies Act" means the International Business Companies Act (Cap. 11.13);

"large company" has the meaning specified in subsection (8);

"licensed company manager" means a person who holds a licence under the Company Management Act (Cap.11.26);

"limited company" means—

(a) a company limited by shares;

(b) a company limited by guarantee that is not authorised to issue shares; or

(c) a company limited by guarantee that is authorised to issue shares;

"Limited Liability Company Act" means the Limited Liability Company Act (Cap. 11.10);

"listed company" means a company whose shares, or any class of whose shares are—

(a) admitted to the official list of the Eastern Caribbean Stock Exchange; or

(b) approved for listing on a recognised exchange;

"merger" has the meaning assigned in section 190;

"Minister" means the Minister responsible for finance;

"non-profit company" means a company incorporated as a non-profit company;

"parent" in relation to a company (the **"first company"**), means another company that—

(a) holds a majority of the issued shares of the first company, excluding shares that carry no voting rights;

(b) has the power to exercise, or control the exercise of, a majority of the voting rights in the first company;

(c) is a member of the first company and has the right to appoint or remove the majority of the directors of the first company;

(d) has the power to exercise, or actually exercises, dominant influence or control over the first company; or

(e) is a parent of a parent of the first company;

"person with significant control" has the meaning specified in section 86;

"prescribed" means prescribed by the Regulations;

"PSC information" means the information concerning a registrable person that is prescribed in accordance with section 99(1)*(a);*

"PSC Register" means the Register of Persons with Significant Control of relevant companies established by the Registrar under section 372;

"PSC verification evidence" means evidence verifying PSC information that is prescribed in accordance with section 99(1)*(b);*

"public company" means a company registered as a public company;

"recognised exchange" means a stock exchange or an investment exchange that is specified by the

Commission as a recognised exchange in a notice published in the *Gazette*;

"register", in relation to an act done by the Registrar, means to register in the Register of Companies, the Register of Foreign Companies, the Register of Registered Charges, the PSC Register or any other register maintained by the Registrar under this Act or the Regulations;

"register of charges" means the register of charges maintained by a company under section 169;

"Register of Registered Charges" means the Register of Registered Charges kept by the Registrar under Part 7

"Register of Companies" means a register of companies incorporated or continued under this Act and of consolidated companies;

"Register of Foreign Companies" means a register of foreign companies registered under Part 12;

"register of directors" means the register of directors that a company is required to maintain under section 148;

"register of members" means the register of members that a company is required to maintain under section 64;

"registered agent" means—

(a) in relation to a company, the person who is the company's registered agent in accordance with section 80(2); or

(b) in relation to a foreign company, the person who is the company's registered agent in accordance with section 221;

"registered name" or **"name"** in relation to a company, means the name with which the company is registered;

"registered office" has the meaning specified in section 78(2);

"registrable person", in relation to a relevant company, has the meaning specified in section 87;

"Registrar" means the Registrar of Companies appointed under section 371;

"Regulations" means regulations made under this Act;

"relevant company" means a company to which Part 5, Division 2 applies;

"reporting company" means a company that is—

(a) a large company; or

(b) a public company;

"resolution"—

(a) in relation to the members of a company, means a members' resolution passed in accordance with section 67; and

(b) in relation to the directors of a company, means a resolution of directors passed in accordance with section 160;

"restated articles" means a single document that incorporates the articles together with all amendments made to it;

"security" means a share or debt obligation and includes an option, warrant or right to acquire a share or debt obligation;

"series" in relation to shares, means a division of a class of shares;

"shareholder" in relation to a company, means—

(a) a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company;

(b) until the person's name is entered in the register of members, a person named as an incorporator in an application to incorporate a company limited by shares at the time of the incorporation of the company;

"solvency test" has the meaning specified in section 51;

"special resolution" means a resolution passed in accordance with section 67(3);

"subsidiary" in relation to a company (the first company), means a company of which the first company is a parent;

"transition period" means the period of six months which commences when this Act comes into force;

"treasury share" means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled; and

"unauthorised financial services business" has the meaning specified in the Financial Services Commission Act (Cap. 11.02).

(2) For the purposes of this Act, **"member"** in relation to a company, means a person who is—

(a) a shareholder;

(b) a guarantee member; or

(c) a member of a non-profit company that is not a company limited by guarantee, as specified in subsection (3).

(3) For the purposes of subsection (2)*(c)*, the members of a non-profit company that is not a company limited by guarantee are each person who—

(a) is a person whose name is entered in the register of members as a member; and

(b) at the time of the incorporation of the company—

(i) until the person's name is entered in the register of members, a person named as an incorporator in an application to incorporate the company; and

(ii) each first director of the company.

(4) A company is affiliated with another company if it is in the same group as the other company, and **"affiliate"** and **"affiliated company"** shall be construed accordingly.

(5) For the purposes of subsection (4**)** and the definitions of **"parent"**, **"subsidiary"** and **"group"**, **"company"** includes a foreign company and any other body corporate.

(6) For the purposes of the definition of **"parent"** in subsection (1)—

(a) a company shall be treated as a member of another company if-–

(i) any of its subsidiaries is a member of the other company; or

(ii) any shares in the other company are held by a person acting on its behalf or on behalf of any of its subsidiaries;

(b) shares held or a power exercisable by a person as a fiduciary shall be treated as not held or exercisable by the person; and

(c) rights held be a person as nominee for another person shall be treated as held by that other person.

(7) A creditor who has a preferential debt is a preferential creditor in relation to that debt.

(8) A company is a large company if—

(a) its gross revenue exceeds the prescribed revenue threshold; or

(b) the value of its assets exceeds the prescribed assets threshold.

PART 2—FORMATION OF COMPANIES, CAPACITY AND POWERS

Division 1 – Incorporation of Companies

3. Types of company

(1) A company may be incorporated or continued under this Act as, and a consolidated company may be—

(a) a company limited by shares;

(b) a company limited by guarantee that is authorised to issue shares;

(c) a company limited by guarantee that is not authorised to issue shares; or

(d) a non-profit company.

(2) A non-profit company is not authorised to issue shares but may be a company limited by guarantee.

(3) The business and activities of a non-profit company shall be restricted to a business or activities that are of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or are for the promotion of some other useful object.

4. Public companies

A company limited by shares may be registered as a public company.

5. Application to incorporate a company

(1) Subject to subsections (2) and (4), one or more persons may apply for the incorporation of a company by filing—

(a) an application to incorporate in the approved form;

(b) articles of incorporation that comply with section 7 signed by the incorporators;

(c) a document in the approved form signed by the proposed registered agent consenting to act as registered agent;

(d) any other document as may be prescribed.

(2) An individual may not apply to incorporate a company under this Act if the individual—

(a) is less than eighteen years of age;

(b) is an undischarged bankrupt;

(c) has been declared by a court or tribunal in Montserrat or elsewhere to be of unsound mind; or

(d) is subject to a disqualification order made under section 166.

(3) An application to incorporate shall specify—

(a) the type of company to be incorporated;

(b) whether the company is to be registered as a public company;

(c) the address of the registered office of the company in Montserrat;

(d) the name and physical address of the proposed registered agent of the company;

(e) the name and physical address of each person proposed as a director of the company;

(f) whether each person named as a proposed director has consented to act as a director of the company;

(g) if the company is to be a company limited by shares, the name of each proposed shareholder of the company, and the number of shares to be issued to each shareholder;

(h) if the company is to be a company limited by guarantee, the name of each proposed member of the company; and

(i) in the case of a company which will be a relevant company, the PSC information for each person who will, on the incorporation of the company, be a registrable person in relation to the company and the PSC verification evidence with respect to the PSC information.

(4) Only the proposed registered agent may file an application for the incorporation of the company.

(5) An application to incorporate a non-profit company shall not be filed without the prior written consent of the Governor.

6. Incorporation of a company

(1) If satisfied that an application complies with section 5 and all other requirements of this Act for incorporation or registration, the Registrar shall—

(a) register the documents filed;

(b) allot a unique number to the company;

(c) issue a certificate of incorporation to the company;

(d) register each incorporator as a member of the company; and

(e) register each person proposed as a director of the company, as a director.

(2) If the company is registered as a public company, the certificate of incorporation shall include a statement to that effect.

(3) A certificate of incorporation issued under subsection (1) is conclusive evidence that—

(a) the requirements of this Act as to incorporation have been complied with; and

(b) a company is incorporated on the date specified in the certificate of incorporation.

Articles of incorporation and by-laws

7. Articles of incorporation

(1) The articles of incorporation of a company shall follow the prescribed form, if any, and state—

(a) the name of the company;

(b) whether the company is—

(i) a company limited by shares;

(ii) a company limited by guarantee that is authorised to issue shares;

(iii) a company limited by guarantee that is not authorised to issue shares; or

(iv) a non-profit company and if it is, whether it is limited by guarantee;

(c) whether the company is a public company;

(d) in the case of a company limited by shares—

(i) the maximum number of shares that the company is authorised to issue or that the company is authorised to issue an unlimited number of shares;

(ii) the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;

(iii) 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; and

(iv) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of the restrictions;

(e) in the case of a company limited by guarantee—

(i) whether the company is authorised to issue shares and, if it is not, a statement that the company is not authorised to issue shares; and

(ii) the amount which each guarantee member of the company is liable to contribute to the company's assets in the event that the company is wound up whilst that person is a member; and

(f) any other matter required by this Act or the Regulations.

(2) In the case of a company limited by shares, the articles shall also state that the company is not authorised to issue bearer shares.

(3) The articles of a company limited by shares or by guarantee may limit the purposes, capacity, rights, powers or privileges of the company.

(4) The articles of a non-profit company shall state—

(a) the restrictions on the business and activities that the company is to carry on;

(b) that the company is not authorised to issue shares and that its business and activities are to be carried on without pecuniary gain to its members, and that any profits or other accretions to the company are to be used in furthering its business or activities;

(c) if the business and activities of the company are of a social nature, the address in full of the clubhouse or similar building that the company is maintaining; and

(d) that each first director is a member of the company upon its incorporation.

8. Effect of articles

(1) The articles of a company are binding as between—

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

(b) each member of the company.

(2) A company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Act except to the extent that they are negated or modified, as permitted by this Act, by the articles.

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

9. Amendment of articles

(1) Subject to subsection (4), the members of a company may, by resolution amend the articles of the company.

(2) The articles of a company may provide—

(a) that a resolution passed by a specified majority of members, greater than 50%, is required to amend the articles or specified provisions of the articles; or

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

(3) Subject to subsection (4), the articles of a company may authorise the directors, by resolution, to amend the articles of the company.

(4) Despite a provision in the articles to the contrary, the directors of a company shall not amend the articles—

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

(b) to change the percentage of members required to pass a resolution to amend the articles; or

(c) in circumstances where the articles cannot be amended by the members.

(5) A resolution of the directors of a company that contravenes subsection (4) is void to the extent that it contravenes subsection (4).

10. Filing of notice of amendment of articles

(1) If a resolution to amend the articles of a company is passed, the company shall file for registration—

(a) a notice of amendment in the approved form; or

(b) restated articles incorporating the amendment made.

(2) An amendment to the articles takes effect—

(a) from the date the Registrar registers the notice of amendment or restated articles incorporating the amendment; or

(b) from the date set by order of the Court under subsection (5).

(3) A company, a member or director of a company or an interested person may apply to the Court for an order that an amendment to the articles has effect from a date on or after the date of the resolution to amend the articles but before the date of registration.

(4) An application under subsection (3) may be made—

(a) on, or after, the date of the resolution to amend the articles; and

(b) before or after the notice of amendment or the restated articles is filed for registration.

(5) The Court may make an order on an application made under subsection (3) if it is satisfied that it would be just to do so but if, at the time of the order, the notice of amendment or restated articles is not filed, the Court shall order that the notice of amendment, or restated articles, must be filed within a period not exceeding five days after the date of the order.

(6) If a notice of amendment or restated articles is not filed within the period specified in a Court order made under subsection (5), the order ceases to have effect and subsection (2) applies as if the order had never been made.

11. Restated articles

(1) A company may file restated articles.

(2) Restated articles shall incorporate only an amendment—

(a) registered under section 10; or

(b) that is deemed to have been made under this Act.

(3) If a company files restated articles under subsection (1), the restated articles have effect as the articles of the company with effect from the date the Registrar registers them.

(4) The Registrar is not required to verify that restated articles filed under this section incorporate—

(a) each amendment;

(b) only an amendment registered under section 10; or

(c) an amendment that is deemed to be made under this Act.

12. Provision of copies of articles to members

(1) A company shall send a copy of the articles to a member of the company who requests a copy on payment of the fee, if any, set by the company in accordance with subsection (2).

(2) The fee set by a company under subsection (1) shall not exceed the reasonable costs of preparing and providing the copy of the articles to the member.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

13. By-laws

(1) A public company shall have by-laws.

(2) A company other than a public company may make by-laws.

(3) The by-laws may be made, amended or repealed by resolution of the members or, by resolution of the directors in accordance with section 138.

(4) A company that makes by-laws shall file a copy of the by-laws for registration, together with a notice in the approved form.

(5) By-laws filed under subsection (4) take effect from the date that the Registrar registers the by-laws.

(6) A company that amends or repeals its by-laws shall file for registration a notice of amendment or repeal in the approved form.

(7) An amendment to, or the repeal of, the by-laws of a company takes effect from the date the Registrar registers the notice of amendment or repeal.

Division 2 - Company Names

14. Required part of registered name

(1) Subject to subsection (3), the registered name of a company limited by shares or by guarantee shall end with—

(a) "**Limited**", "**Corporation**" or "**Incorporated**";

(b) "**Ltd**", **"Ltd."**, "**Corp**", "**Corp.**", "**Inc**" or "**Inc.**"; or

(c) any other word, words or abbreviation prescribed.

(2) The registered name of a non-profit company shall end with—

(a) "**Corporation**" or "**Incorporated**";

(b) "**Corp**" or "**Inc**"; or

(c) any other word, words or abbreviation prescribed.

(3) The registered name of a public company shall end with "**Limited**" or "**Ltd"**.

15. Restrictions on company names

(1) The Registrar shall not register a company, on incorporation, continuation, merger or consolidation, under a name—

(a) subject to section 22(1), the use of which contravenes another enactment or the Regulations;

(b) that, subject to regulations made under section 19—

(i) is identical to the name under which a company is or has been registered under this Act or a former Act;

(ii) is so similar to the name under which a company is or has been registered under this Act or a former Act that the use of the name would, in the opinion of the Registrar, confuse or mislead;

(c) that is identical to a name that has been reserved under section 20 or that is so similar to a name that has been reserved under section 20 that the use of both names

by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;

(d) that contains a restricted word, phrase or abbreviation, unless the Registrar has given prior written consent to use the word, phrase or abbreviation;

(e) that contains a character other than a prescribed permitted character;

(f) that contains the word "Montserrat" unless the Cabinet has given its prior approval to the use of the word in the name of the company; or

(g) that, in the opinion of the Registrar, is offensive, objectionable or contrary to public policy or to the public interest.

(2) For the purposes of subsection (1)*(d)*, the Registrar may, by notice published in the *Gazette*, specify a restricted word, phrase or abbreviation.

(3) Despite subsection (1)(*b*)(i), the Registrar may register a company under a name that is similar to the name of another company if both companies are affiliates.

16. Company may change registered name

(1) Subject to its articles, a company may apply to the Registrar in the approved form to change its registered name.

(2) If the Registrar is satisfied that a company's proposed new name complies with section 14 and is a name under which the company could be registered under section 15, the Registrar shall—

(a) register the company's change of name; and

(b) issue a certificate of change of name to the company.

17. Registrar may direct change of registered name

(1) If the Registrar considers, on reasonable grounds, that the registered name of a company does not comply with sections 14 or 15, the Registrar may, by written notice,

direct the company to apply to change its name on or before a date specified in the notice.

(2) The Registrar shall, in a notice under subsection (1) specify a date which is at least twenty-one days after the date of the notice.

(3) If a company fails to apply to change its registered name to a name approved by the Registrar on or before the date specified in the notice under subsection (1), the Registrar may revoke the registered name of the company and assign it a new registered name.

(4) If the Registrar assigns a new registered name to a company the Registrar shall—

(a) register the company's change of name;

(b) issue a certificate of change of name to the company; and

(c) publish the change of registered name in the *Gazette*.

18. Effect of change of registered name

(1) A change of the registered name of a company under section 16 or 17—

(a) takes effect from the date of the certificate of change of registered name issued by the Registrar; and

(b) does not affect—

(i) the rights or obligations of the company; or

(ii) legal proceedings by or against the company.

(2) Legal proceedings commenced against a company under its former registered name may be continued against the company under its new registered name.

(3) If the registered name of a company is changed under section 17, the company's articles are deemed to be amended to state the new registered name with effect from the date of the change of name certificate.

19. Regulations may provide for company names to be re-used

The Regulations may provide for the reuse of a registered name previously used by a company that—

(a) is or has been registered under this Act or a former Act, or by a former Act company, that has—

(i) changed its name;

(ii) been struck off the Register, or off a register maintained under a former Act, but not dissolved; or

(iii) been dissolved under this Act or a former Act; or

(b) has been registered under this Act but, in respect of which, the Registrar has issued a certificate of discontinuance under section 206.

20. Reservation of name

(1) The Registrar may, on an application made in the approved form and in accordance with subsection (2), reserve for forty five days a name for an intended company or a company that is about to change its name.

(2) An application for the reservation of a name may only be made—

(a) if the name is to be reserved for an intended company, by the proposed registered agent of the intended company; or

(b) if the name is to be reserved for a company that is about to change its name, by the company.

(3) The Registrar may refuse to reserve a name if the Registrar is not satisfied that the name complies with this Act.

21. Use of registered company name

(1) A company shall ensure that its full registered name is clearly stated in—

(a) each written communication sent by or on behalf of, the company; and

(b) each document issued or signed by or on behalf of the company that evidences or creates a legal obligation of the company.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

22. Limit on Registrar's obligations

(1) Nothing in this Division requires the Registrar, when determining whether to incorporate or continue a company under a name, to register a change of name or to direct a change of name, to—

(a) make a determination of any person's interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under an enactment or rule of law in Montserrat or an enactment or rule of law in a jurisdiction other than Montserrat; or

(b) take account of any trade or service mark, or equivalent right, whether registered in Montserrat or in a jurisdiction other than Montserrat.

(2) Subsection (1**)** does not prevent the Registrar from taking into account a matter specified in that subsection when determining whether, in his opinion, the registration of a company name is objectionable or contrary to public policy or to the public interest or restricted under section 15.

(3) The registration of a company under this Act with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Division.

Division 3 - Capacity and Powers

23. Separate legal personality

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

24. Capacity and powers of company

(1) Subject to this Act, any other enactment and its articles, a company has—

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph *(a)*, full rights, powers and privileges.

(2) Without limiting subsection (1), subject to its articles, a company may—

(a) carry on business, conduct its affairs and exercise its powers in any jurisdiction outside Montserrat to the extent that the laws of Montserrat and of that jurisdiction permit;

(b) unless it is a company limited by guarantee that is not authorised to issue shares or a non-profit company—

(i) issue and cancel shares and hold treasury shares;

(ii) grant an option over unissued shares in the company and treasury shares;

(iii) issue securities that are convertible into shares; and

(iv) give a person financial assistance in connection with the acquisition of its own shares;

(c) issue a debt obligation and grant an option, warrant and right to acquire a debt obligation; and

(d) guarantee a person's liability or obligation and secure an obligation by mortgage, pledge or other charge, of any of its assets for that purpose.

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

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

(a) any enactment prohibiting or restricting the carrying on of the business or activity; or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

(5) A company, other than a company limited by guarantee and not authorised to issue shares, shall not commence business before it has issued one or more shares.

(6) A company limited by guarantee, shall not commence business before it has at least one guarantee member.

(7) A non-profit company that is not a company limited by guarantee shall not commence business before it has at least one member.

25. Validity of acts of company

An act of a company and a transfer of an asset by or to a company is not invalid solely because the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

26. Personal liability

Subject to section 62, a director, agent or voluntary liquidator of a company is liable for a debt, obligation or default of the company, only as provided for in this Act or any other enactment, and except in so far as the person may be liable for his or her own conduct or acts.

27. Dealings with other persons

(1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—

(a) this Act, the articles or by laws of the company or any unanimous shareholder agreement has not been complied with;

(b) a person named as a director of the company in the most recent notice filed under section 149—

(i) is not a director of the company;

(ii) has not been duly appointed as a director of the company; or

(iii) is not authorised to exercise a power which a director of a company carrying on business or activities of the kind carried on by the company customarily has authority to exercise;

(c) a person held out by the company as a director, employee or agent of the company—

(i) has not been duly appointed; or

(ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business or activities of the kind carried on by the company customarily has authority to exercise;

(d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business or activities of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine;

(f) that the place named in the most recent notice sent to the Registrar under section 82 is not the registered office of the company;

unless the person has, or ought to have, by virtue of his relationship to the company, knowledge of the matters referred to in any of paragraphs *(a)* to *(f)*.

(2) Subsection (1) applies if a person referred to in paragraphs *(b)* to *(e)* of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired an asset, right or interest from the company has actual knowledge of the fraud or forgery.

28. Constructive notice

(1) A person is not deemed to have notice or knowledge of a document relating to a company, including the articles, or of the contents of the document solely because the document is available—

(a) to the public from the Registrar; or

(b) for inspection at the registered office of the company in Montserrat or at the office of its registered agent.

(2) Subsection (1) does not apply in relation to a document filed under Part 7.

(3) A person is deemed to have notice of a document specified in subsection (2), that has been registered by the Registrar under this Act and the contents of the document.

Contracts, Powers of Attorney and Seal

29. Pre-incorporation contracts

(1) Subject to this section, a person who enters into a written contract in the name of or on behalf of a company before the company is incorporated, is personally bound by the contract and is entitled to the benefits of the contract.

(2) A company may, by an action or conduct signifying its intention to be bound by a written contract entered into in its name or on its behalf before it was incorporated, adopt the contract—

(a) within the period specified in the contract; or

(b) if a period is not specified, within a reasonable period after the company's incorporation.

(3) If a company adopts a contract under subsection (2)—

(a) the company is bound by, and entitled to the benefits of, the contract as if the company had been incorporated at the date of the contract and had been a party to it; and

(b) subject to a provision of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

(4) Subject to subsection (6), a party to a written contract entered into in the name of or on behalf of a company before it was incorporated 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 company and a person who purported to act in the name of the company or on its behalf and the Court may, upon the application, make any order it thinks fit.

(5) Subsection (4) applies whether or not the contract is adopted by the company.

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

30. Contracts generally

(1) A company may enter into a contract as follows—

(a) a contract that, if entered into by an individual, would be required by law to be in writing and under seal, may be—

(i) entered into by or on behalf of the company in writing under the common seal of the company; and

(ii) varied or discharged in accordance with subparagraph (i);

(b) a contract that, if entered into by an individual, would be required by law to be in writing and signed may be—

(i) entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company; and

(ii) varied or discharged in accordance with subparagraph (i); and

(c) a contract that, if entered into by an individual, would be valid although entered into orally, and not reduced to writing may be—

(i) entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company; and

(ii) varied or discharged in accordance with subparagraph (i).

(2) A contract entered into in accordance with this section is valid and is binding on the company, its successors and each party to the contract.

(3) Despite subsection (1)*(a)*—

(a) an instrument is validly executed by a company as a deed or an instrument under seal if it is—

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

(ii) it is expressed to be, or is expressed to be executed as, or otherwise makes clear that it—

(A) is intended to be, a deed; and

(B) is signed by a director or by a person acting under the express or implied authority of the company; and

(b) a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised agent of the company is not invalid solely because the common seal of the company is not affixed to the contract, agreement or instrument.

(4) Subsection (3**)** does not affect the validity of an instrument under seal validly executed before, on or after the date on which this section comes into force.

31. Notes and bills of exchange

(1) A promissory note or bill of exchange is deemed to have been made, accepted or endorsed by a company if it is made, accepted or endorsed in the name of the company—

(a) by or on behalf or on account of the company; or

(b) by a person acting under the express or implied authority of the company.

(2) If a promissory note or bill of exchange is endorsed under subsection (1), the person signing the endorsement is not liable on the endorsement of the promissory note or bill of exchange.

32. Power of attorney

(1) Subject to its articles, a company may, by an instrument in writing appoint a person as its attorney generally or in relation to a specific matter.

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

(3) An instrument appointing an attorney under subsection (1**)** may be—

(a) executed as a deed; or

(b) signed by a person acting under the express or implied authority of the company.

33. Authentication or attestation

A document requiring authentication or attestation by a company may be signed by a director, the secretary, if appointed, or by an authorised agent of the company and need not be under its common seal.

34. Common seal

(1) A company may have a common seal and, if it has a seal, an imprint of the seal shall be kept—

(a) in the case of a company that is required to appoint a licensed company manager as its registered agent, at the office of its registered agent; or

(b) in the case of a company to which paragraph *(a)* does not apply, at its registered office.

(2) Unless required by an enactment to use its common seal, the company may use its common seal or any other form of seal for the purpose of sealing any document.

(3) If authorised by its by-laws, a company may have an official seal for use outside Montserrat.

(4) An official seal shall be a facsimile of the company's common seal with the addition on its face of the name of every country, district or place where it is to be used.

(5) Each document to which an official seal of the company is affixed binds the company as if it had been sealed with the common seal of the company.

(6) A company may, by an instrument in writing under its common seal, authorise any person appointed for the purpose to affix the company's official seal to any document to which the company is party in the country, district or place where its official seal can be used.

(7) A person dealing with an agent appointed under subsection (6) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period, if any, mentioned in the instrument, or, if no period is mentioned, until that person

has actual notice of the revocation or determination of the authority.

(8) A person who affixes an official seal of a company to a document shall, certify in writing on the document the date on which, and the place at which, the official seal is affixed.

PART 3—SHARES, DISTRIBUTIONS AND SHARE REDEMPTIONS

Division 1 - Shares

Rights and obligations

35. Rights attaching to shares and classes and series of shares

(1) A share in a company is personal property.

(2) Subject to subsection (3), a share in a company confers on the holder—

(a) the right to one vote at a meeting of the members of the company or on a resolution of the members of the company;

(b) the right to an equal share in any dividend paid in accordance with this Act; and

(c) the right to an equal share in the distribution of the surplus assets of the company.

(3) Subject to subsection (4), if authorised by its articles, a company may issue—

(a) more than one class of shares;

(b) a class of shares in series; and

(c) shares subject to terms that negate, modify or add to the rights specified in subsection (2).

(4) If a company is authorised to issue more than one class of shares, the rights set out in subsection (2) shall be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

36. Types of shares

(1) Without limiting section 35(3)*(b)*, shares in a company may—

(a) be redeemable;

(b) confer no rights, or preferential rights, to distributions;

(c) confer special, limited or conditional rights, including voting rights;

(d) confer no voting rights;

(e) participate only in certain assets of the company; or

(f) if issued in, or converted to one class or series, be convertible to another class or series, in the manner specified in the articles.

(2) A company may issue—

(a) bonus shares, partly paid shares, nil paid shares; or

(b) fractional shares.

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

(4) Subsections (2) and (3) are subject to the articles of the company.

37. No nominal value

(1) A share shall not have a nominal or par value.

(2) Subsection (1) does not prevent the issue by a company of a redeemable share.

38. Bearer shares

(1) A company shall not—

(a) issue a bearer share;

(b) convert a registered share to a bearer share; or

(c) exchange a registered share for a bearer share.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $50,000.

39. Change in number of shares company authorised to issue

(1) If the articles of a company are amended to change the maximum number of shares that the company is authorised to issue, the company shall, together with the notice of amendment of its articles or the restated articles filed under section 11, file a notice in the approved form setting out details of the change in the number of shares that it is authorised to issue.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $25,000.

40. Division and combination of shares

(1) Subject to its articles, a company may—

(a) divide its shares, including issued shares, into a larger number of shares; or

(b) combine its shares, including issued shares, into a smaller number of shares.

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

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

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

Issue of Shares

41. Issue of shares and share certificates

(1) Subject to this Act, the articles and any unanimous shareholder agreement, shares in a company may be issued to a person, and an option to acquire shares in a company may be granted to a person on the terms and conditions the directors determine.

(2) The articles of a company shall state the circumstances in which a company must issue a share certificate.

(3) If a company issues share certificates, the certificates—

(a) shall be signed by at least one director of the company or by any other person who may be authorised by the articles to sign share certificates; or

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

(4) The articles may provide for the signatures or common seal to be a facsimile.

(5) A share is deemed to be issued when the name of the shareholder is entered in the register of members.

42. Consent to issue of shares

The issue by a company of a share that—

(a) increases a person's liability to the company; or

(b) imposes a new liability on a person to the company,

is void if that person or an authorised agent of that person, does not agree in writing to becoming the holder of the share.

43. Consideration for shares

Subject to section 44, the consideration for which a share is issued may take any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property

(including goodwill and know-how), services rendered or a contract for future services.

44. Shares issued for consideration other than money

Before issuing shares for a consideration other than money, the directors shall pass a resolution stating—

(a) the amount to be credited for the issue of the shares;

(b) their determination of the reasonable present cash value of the non-money consideration for the issue of the shares; and

(c) that, in their opinion, the present cash value of the non-money consideration for the issue of the shares is not less than the amount to be credited for the issue of the shares.

45. Pre-emptive rights

(1) Subsections (2) to (4) apply to a company except to the extent that they are negated or modified by the articles.

(2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or before shares already issued by the company, the directors shall offer the shares to existing shareholders in a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights of those shareholders would be maintained.

(3) Shares offered to existing shareholders under subsection (2) shall be offered at a price and on the terms that the shares are to be offered to another person.

(4) An offer under subsection (2) must remain open for acceptance for a reasonable time.

(5) This section does not prevent the articles of a company modifying the provisions of this section or from making different provisions with respect to pre-emptive rights.

(6) Despite this section, a shareholder does not have a pre-emptive right in respect of shares to be issued by the

company pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

(**7**) The Regulations may disapply, limit or modify the provisions of this section in relation to public companies and listed companies.

46. Forfeiture of shares

(1) The articles of a company, or the terms on which shares in a company are issued, may contain provisions for the forfeiture of shares which are not fully paid for on issue.

(2) A provision in the articles or the terms on which shares in a company are issued, providing for the forfeiture of shares shall contain a requirement that a written notice of call specifying a date for payment to be made shall be served on the member who defaults in making payment in respect of the share.

(3) The written notice of call referred to in subsection (2) shall—

(a) name a further date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made; and

(b) contain a statement that in the event of non-payment at or before the time named in the notice a share, in respect of which payment is not made, will be liable to be forfeited.

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

(5) A company is not obliged to refund money to a member whose shares have been cancelled under subsection (4) and that member shall be discharged from any further obligation to the company.

Transfer of Shares

47. Shares may be transferred

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

(2) The personal representative of a deceased shareholder may transfer a share if the personal representative is not a shareholder at the time of the transfer.

48. Transfer of shares by operation of law

Shares in a company may pass by operation of law, despite anything to the contrary in the articles of the company.

49. Transfer of shares

(1) Shares are transferred by a written instrument of transfer that is signed by the transferor and contains the name and address of the transferee.

(2) An instrument of transfer shall also be signed by the transferee if registration as a holder of the share imposes a liability to the company on the transferee.

(3) An instrument of transfer of a registered share shall be sent to the company for registration.

(4) Subject to the articles and to subsection (5), a company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that specified in the resolution.

(5) The directors shall not pass a resolution refusing or delaying the registration of a transfer unless this Act or the articles permit it.

(6) If the directors pass a resolution under subsection (4), the company shall, as soon as practicable, send the transferor and transferee a notice of the refusal or delay in the approved form.

(7) Subject to the articles of a company, the directors may refuse or delay the registration of a transfer of shares if the transferor fails to pay an amount due in respect of the shares.

(8) The transfer of a registered share takes effect when the name of the transferee is entered in the register of members.

(9) If the directors of a company are satisfied that an instrument of transfer is signed but that the instrument is lost or destroyed, the directors may resolve—

(a) to accept evidence of the transfer of the shares they consider appropriate; and

(b) that the transferee's name be entered in the register of members,

despite the absence of the instrument of transfer.

(10) The Regulations may disapply, limit or modify the provisions of this section in relation to public companies and listed companies.

Division 2 - Distributions

50. Application of this Division

This Division applies to a company limited by shares and a company limited by guarantee.

51. Meaning of "solvency test" and "distribution"

For the purposes of this Division—

(a) a company satisfies the solvency test if—

(i) the value of the company's assets exceeds its liabilities, and

(ii) the company is able to pay its debts as they fall due; and

(b) "**distribution**", in relation to a distribution by a company to a member, means—

(i) the direct or indirect transfer of an asset, other than the company's own shares, to or for the benefit of the member, or

(ii) the incurring of a debt to or for the benefit of a member, in relation to shares held by a shareholder, or to the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of its shares, a transfer of indebtedness or otherwise, and includes a dividend.

52. Distributions

(1) Subject to this Part and to the articles of the company, the directors of a company limited by shares may, by resolution, authorise a distribution by the company to a member at a time and in an amount they think fit, if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

(2) A resolution of directors passed under subsection (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.

(3) If, after a distribution is authorised and before the distribution is made, the directors cease to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, a distribution made by the company is deemed to be unauthorised.

53. Recovery of distribution made when company did not satisfy solvency test

(1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member unless—

(a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;

(b) the member has altered his position in reliance on the validity of the distribution; and

(c) it would be unfair to require repayment in full or at all.

(2) If, by virtue of section 52(3), a distribution is deemed to be unauthorised, a director who—

(a) ceased, after authorisation but before the making of the distribution, to be satisfied on reasonable grounds that the company would satisfy the solvency test immediately after the distribution is made; and

(b) failed to take reasonable steps to prevent the distribution being made,

is personally liable to the company to repay to the company the portion of the distribution that cannot be recovered from members.

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

(a) permit the member to retain; or

(b) relieve the director from liability in respect of,

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

Division 3 – Share Redemptions

54. Purchase, redemption or other acquisition of own shares

(1) Subject to section 52 and to the articles, a company may purchase, redeem or otherwise acquire its own shares in accordance with this Division, but not otherwise.

(2) Except as provided in section 55, a company shall not hold shares in its parent.

(3) A parent company shall cause a subsidiary that holds its shares to sell or otherwise dispose of the shares within five years from the date, as the case requires, that—

(a) the body corporate became a subsidiary of the company; or

(b) the company was continued under this Act

(4) Unless the shares are held as treasury shares in accordance with section 60, any shares acquired by a company are deemed to be cancelled immediately on purchase, redemption or other acquisition.

55. Exemptions

(1) A company may, in the capacity of a legal representative, hold its own shares or shares in its parent unless it, or the parent, or a subsidiary of either of them has a beneficial interest in the shares.

(2) A company may hold its own shares or shares in its parent as security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

56. Process for purchase, redemption or other acquisition of own shares

(1) The directors of a company may make an offer to purchase, redeem or otherwise acquire shares issued by the company, if the offer is—

(a) an offer to each shareholder to purchase, redeem or otherwise acquire shares issued by the company that—

(i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and

(ii) affords each shareholder a reasonable opportunity to accept the offer; or

(b) an offer to a shareholder to purchase, redeem or otherwise acquire shares—

(i) to which each shareholder gives written consent; or

(ii) that is permitted by the articles and is made in accordance with section 57.

(2) If an offer is made in accordance with subsection (1)*(a)*—

(a) the offer may also permit the company to purchase, redeem or otherwise acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and

(b) if the number of additional shares exceeds the number of shares that the company is entitled to purchase, redeem or otherwise acquire, the number of additional shares shall be reduced rateably.

57. Offer to one or more shareholders

(1) The directors of a company may make an offer to a shareholder under section 56(1)*(b)*(ii) only if they have passed a resolution stating that, in their opinion—

(a) the purchase, redemption or other acquisition is to the benefit of the remaining shareholders; and

(b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.

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

(3) The directors shall not make an offer to a shareholder under section 56(1**)***(b)* if, after passing a resolution under subsection (1) and before the making of the offer, they cease to hold the opinion specified in subsection (1).

(4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under section 56(1)*(b)* on the grounds that—

(a) the purchase, redemption or other acquisition is not in the best interests of the remaining shareholders; or

(b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.

58. Shares redeemed otherwise than at option of company

(1) If a share is redeemable at the option of a shareholder and the shareholder gives the company proper notice of his intention to redeem the share—

(a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;

(b) unless the share is held as a treasury share under section 60, the share is deemed to be cancelled; and

(c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) If a share is redeemable on a specified date—

(a) the company shall redeem the share on that date;

(b) unless the share is held as a treasury share under section 60, the share is deemed to be cancelled; and

(c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(3) If a company redeems a share under subsection (1) or (2), sections 56 and 57 do not apply.

59. Purchases, redemptions or other acquisitions deemed not to be a distribution

The purchase, redemption or other acquisition by a company of one or more of its own shares is deemed not to be a distribution if—

(a) the company redeems the share under section 58;

(b) the company redeems the share in accordance with a shareholder's right to have his shares redeemed or exchanged for money or other property of the company; or

(c) the company purchases, redeems or otherwise acquires the share under section 197.

60. Treasury shares

(1) A company may hold shares that have been purchased, redeemed or otherwise acquired under section 54 as treasury shares if—

(a) the articles of the company do not prohibit it from holding treasury shares;

(b) the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares; and

(c) the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed 50% of the shares of that class previously issued by the company, excluding shares that have been cancelled.

(2) The rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

(3) A treasury share may be transferred by the company and this Act and the articles that apply to the issue of shares apply to the transfer of a treasury share.

Division 4 – Mortgages and Charges of Shares

61. Mortgages and charges over shares

(1) A mortgage or charge over shares of a company—

(a) shall be in writing signed by, or with the authority of, the registered holder of the share to which the mortgage or charge relates; and

(b) need not be in any specific form but it shall clearly indicate—

(i) the intention to create a mortgage or charge; and

(ii) the amount secured by the mortgage or charge or how that amount is to be calculated.

(2) If the governing law of a mortgage or charge over shares in a company is not the law of Montserrat—

(a) the mortgage or charge shall comply with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and

(b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the articles of the company and this Act.

(3) If the governing law of a mortgage or charge over shares in a company is the law of Montserrat, in the case of a default by the mortgagor or chargor on the terms of the mortgage or charge, the mortgagee or chargee is entitled to the following remedies—

(a) subject to any limitation or provision to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and

(b) the right to appoint a receiver who, subject to any limitation or provision to the contrary in the instrument creating the mortgage or charge, may—

(i) vote the shares;

(ii) receive distributions in respect of the shares; and

(iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until the mortgage or charge is discharged.

(4) Subject to a provision to the contrary in the instrument of mortgage or charge of shares of a company, an amount that accrues from the enforcement of the mortgage or charge shall be applied in the following manner—

(a) first, in meeting the costs incurred in enforcing the mortgage or charge;

(b) secondly, in discharging the sums secured by the mortgage or charge; and

(c) thirdly, in paying a balance due to the mortgagor or chargor.

(5) Subject to subsection (6), if the governing law of a mortgage or charge of shares in a company is the law of Montserrat, the remedies referred to in subsection (3) are exercisable only if—

(a) a default has occurred and has continued for a period of not less than thirty days, or a shorter period specified in the instrument creating the mortgage or charge; and

(b) the default has not been rectified within fourteen days or a shorter period specified in the instrument creating the mortgage or charge from service of the notice specifying the default and requiring the rectification of the default.

(6) If the governing law of a mortgage or charge of shares in a company is the law of Montserrat, if the instrument creating the mortgage or charge so provides, the remedies referred to in subsection (3) are exercisable immediately on a default occurring.

(7) In the case of a mortgage or charge of registered shares there may be entered in the register of members of the company—

(a) a statement that the shares are mortgaged or charged;

(b) the name of the mortgagee or chargee; and

(c) the date on which the statement and name are entered in the register of members.

PART 4—MEMBERS

62. Company to have one or more members

(1) A company shall have at least one member.

(2) In the case of a company limited by guarantee that is authorised to issue shares, at least one member shall be a guarantee member.

(3) If there is no member of a company, a person doing business or carrying on activities in the name of or on behalf of the company—

(a) is personally liable for the payment of the company's debts contracted at the time; and

(b) may be sued for those debts without joinder in the proceedings of another person.

63. Liability of members

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

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

(a) any amount unpaid on a share held by the shareholder;

(b) any liability expressly provided for in the articles of the company; and

(c) any liability to repay a distribution under section 53.

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

(a) the amount that the guarantee member is liable to contribute as specified in the articles in accordance with section 7(1)*(e)*;

(b) any other liability expressly provided for in the articles of the company; and

(c) any liability to repay a distribution under section 53.

Register of members

64. Company to maintain register of members

(1) A company shall maintain a register of members setting out—

(a) in the case of a company limited by shares—

(i) the name and address of each person who holds shares in the company;

(ii) the number of each class and series of shares held by each shareholder;

(iii) whether, under the articles of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(iv) where any document that contains the restrictions or limitations may be inspected;

(b) in the case of a company limited by guarantee, the name and address of each guarantee member of the company;

(c) in the case of a non-profit company, the name and address of each member of the company; and

(d) in the case of any company—

(i) the date on which the name of each member was entered in the register of members;

(ii) the date on which a person ceased to be a member; and

(e) any other information as may be prescribed

(2) Subject to the Regulations, the register of members shall be in a form approved by the directors.

(3) The Regulations may prescribe the circumstances in which information relating to a former member of a company may be deleted from the register of members.

(4) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $25,000.

65. Register of members as evidence

(1) The register of members is prima facie evidence of any matters that are required or permitted by this Act or the Regulations to be included in the register of members.

(2) Without limiting subsection (1), the entry of the name of a person in the register of members as a holder of a share in a company is *prima facie* evidence that legal title in the share vests in that person.

(3) A company may treat—

(a) the registered holder of a share as the only person entitled to—

(i) exercise any voting rights attaching to the share;

(ii) receive a notice;

(iii) receive a distribution in respect of the share; and

(iv) exercise other rights and powers attaching to the share; and

(b) a person registered as a guarantee member or a member of a non-profit company that is not limited by guarantee as the only person entitled to exercise any voting or other rights and powers exercisable in relation to membership of the company.

66. Rectification of register of members

(1) A person specified in subsection (2) may apply to the Court for an order that the register be rectified if—

(a) information that is required to be entered in the register of members under section 64 is—

(i) omitted from the register; or

(ii) inaccurately entered in the register; or

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

(2) An application under subsection (1) may be made by—

(a) a member of the company;

(b) a person affected by the omission, inaccuracy or delay; or

(c) the company.

(3) The Court may—

(a) refuse an application under subsection (1), with or without costs to be paid by the applicant; or

(b) order the rectification of the register with or without costs to be paid by the company; and

(c) if it makes an order under paragraph *(b)*, direct the company to pay damages to the applicant.

(4) In any proceedings under this section, the Court may determine any question—

(a) relating to the right of a person who is a party to the proceedings to have his or her name entered in or omitted from the register of members, whether the question arises between—

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

(ii) between members or alleged members and the company; and

(b) that may be necessary or expedient to be determined for the rectification of the register of members.

67. Members' resolutions

(1) Unless otherwise specified in this Act or in the articles of a company, the exercise by the members of a company of a power which is given to them under this Act or the articles shall be by a resolution passed—

(a) at a meeting of members held under section 68; or

(b) as a written resolution in accordance with section 73.

(2) A resolution, other than a special resolution, is passed—

(a) if approved by a majority of in excess of 50%; or

(b) if a higher majority is required by the articles in relation to a matter, that higher majority, of the votes of the members entitled to vote and voting on the resolution.

(3) A special resolution is passed if—

(a) at least twenty-one days' notice has been given of the resolution; and

(b) approved by a majority of not less than 75%.

(4) For the purposes of subsections (2) and (3)—

(a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and

(b) unless the articles otherwise provide, a guarantee member or in the case of a non-profit company, a member, is entitled to one vote on a resolution on which the member is entitled to vote.

68. Meetings of members

(1) The directors of a reporting company shall call an annual meeting of members not later than eighteen months after the company is incorporated or continued and subsequently not later than fifteen months after holding the last preceding annual meeting.

(2) Subject to subsection (1), a meeting of the members of a company may be called by—

(a) the directors of the company; or

(b) a person who is authorised under the articles to call the meeting.

(3) Subject to a provision in the articles for a lesser percentage, the directors of a company shall call a meeting of the members of the company if requested in writing to do so by members entitled to exercise at least 30% of the

voting rights in respect of the matter for which the meeting is requested.

(4) Subject to a company's articles, a meeting of the members of the company may be held at a time and place, within or outside Montserrat, the convener of the meeting considers appropriate.

(5) Subject to the articles of a company, a member of the company shall be deemed to be present at a meeting of members if—

(a) he participates by telephone or other electronic means; and

(b) all members participating in the meeting are able to hear each other.

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

(7) Subject to the articles, the following apply if shares are jointly owned—

(a) if two or more persons hold shares jointly each person may be present in person or by proxy at a meeting of members and may speak as a member;

(b) if only one of the shareholders is present in person or by proxy, he may vote on behalf of each of the shareholders; and

(c) if two or more shareholders are present in person or by proxy, the shareholders must vote as one.

(8) A director of the company is entitled to attend and be heard at a meeting of members.

69. Notice of meetings of members

(1) Subject to a requirement in the articles to give longer notice, a person who convenes a meeting of the members of a company shall give not less than seven days' notice of the meeting to—

(a) each person—

(i) whose name, on the date the notice is given, appears as a member in the register of members; and

(ii) is entitled to vote at the meeting; and

(b) each director of the company.

(2) Despite subsection (1), and subject to the articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90% majority, or a majority specified in the articles, of the total voting rights on each matter to be considered at the meeting have waived notice of the meeting and, for that purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part.

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

(4) The convener of a meeting of members may fix the date notice is given of a meeting, or a date specified in the notice, as the record date for determining the members who are entitled to vote at the meeting.

70. Quorum for meetings of members

(1) Subject to subsection (2), the quorum for a meeting of the members of a company for the purposes of a resolution of members is the quorum set under the articles of the company.

(2) If a quorum is not fixed under the articles, a meeting of members is properly constituted if at the commencement of the meeting there are present in person or by proxy, members entitled to exercise at least 50% of the votes.

71. Court may call meeting of members

(1) The Court may order a meeting of members to be held and conducted in a manner the Court orders if the Court determines that—

(a) it is impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the articles of the company; or

(b) it is in the interests of the members of the company that a meeting of members is held.

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

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

72. Regulations may provide for meetings of members

The Regulations may specify provisions for the calling of members' meetings and the proceedings at members' meetings.

73. Written resolutions

(1) Subject to the articles of a company, an action that may be taken by members of the company at a meeting of members may also be taken by a resolution of members consented to in writing or by any form of written electronic communication, without the need for notice.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in the same form each signed or assented to by a member.

(3) A written resolution dealing with all matters required by this Act to be dealt with at a meeting of members, and signed by all the members entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of members.

74. Service of notice on members

A notice, information or written statement required under this Act to be given by a company to a member shall be served—

(a) in the manner specified in the articles; or

(b) in the absence of a provision in the articles, by—

(i) personal service;

(ii) mail addressed to each member at the address shown in the register of members; or

(iii) if the member consents, by the prescribed electronic means.

Shareholder agreements

75. Pooling agreement

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

76. Unanimous shareholder agreement

(1) An otherwise lawful written agreement among all the shareholders of a company, 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 company to manage the business and affairs of the company 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 company 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 company makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the company, the declaration constitutes a unanimous shareholder agreement.

(4) If any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination thereof, shall be filed with the Registrar within fifteen days after the execution or termination.

Shareholder approvals

77. Extraordinary transaction

(1) A sale, lease or exchange of all, or substantially all, the property of a company other than in the ordinary course of business of the company requires the approval of the members in accordance with this section.

(2) A notice of a meeting of members complying with section 74 shall be sent in accordance with that section to each member and shall—

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

(b) state that a dissenting member is entitled to be paid the fair value of his shares in accordance with section 200,

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 members 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 company 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 members of a class or series of shares of the company 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 members 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 company, if authorised by the members 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 members.

PART 5—COMPANY ADMINISTRATION

Division 1 - Registered office and registered agent

78. Registered office

(1) A company shall have a registered office in Montserrat.

(2) The registered office of a company is—

(a) the place specified as the company's registered office in the application filed under section 5(1); or

(b) if a notice of change of registered office is filed under section 82, the place specified in the last notice to be registered by the Registrar.

(3) The registered office of a company, whether as specified in the articles or in a notice filed under section 82—

(a) shall be a physical address in Montserrat; and

(b) if a company's registered office is at the office of its registered agent, that fact shall be stated in the description of the address in the articles or in the notice.

79. Eligibility for appointment as registered agent

(1) A person is eligible for appointment as the registered agent of a company if—

(a) in the case of a company specified in subsection (2), the person is a licensed company manager; or

(b) in the case of a company to which paragraph *(a)* does not apply, the person—

(i) is a licensed company manager; or

(ii) is a director of the company who is an individual resident in Montserrat.

(2) The following companies are specified for the purposes of subsection (1)—

(a) a reporting company; and

(b) subject to any exemptions prescribed by the Regulations, a company other than a reporting company that carries on any of its business or activities outside Montserrat.

(3) For the purposes of this section and section 84, an individual is resident in Montserrat if the individual's normal and habitual residence is in Montserrat and, in determining an individual's normal and habitual residence, temporary or occasional absences from Montserrat are disregarded.

(4) Subject to section 84(8), a person who, not being eligible for appointment under subsection (1) agrees to be or acts as the registered agent of a company, commits an offence and is liable on summary conviction to a fine of $25,000.

80. Registered agent

(1) A company shall have a registered agent in Montserrat, who shall be a person eligible to act as its registered agent under section 79.

(2) Unless the last registered agent of a company resigns in accordance with section 83 or ceased to be the company's registered agent in accordance with section 84(5), the registered agent of a company is—

(a) the person named as the proposed registered agent in the application filed under section 5(1); or

(b) if a change of registered agent is filed under section 82, the person specified as the company's registered

agent in the last notice to be registered by the Registrar.

(3) A company commits an offence and is liable on summary conviction to a fine of $25,000 if it—

(a) does not have a registered agent; or

(b) appoints as its registered agent a person who is not eligible to act as its registered agent.

81. Appointment of registered agent

(1) If at any time a company does not have a registered agent it shall immediately, by resolution of members or directors, appoint a person eligible to act under section 79 as its registered agent.

(2) A resolution to appoint a registered agent may be passed—

(a) despite a provision to the contrary in the articles, by the members of the company; or

(b) if authorised by the articles, by the directors of the company.

(3) A notice of appointment of registered agent shall be—

(a) endorsed by the registered agent with his agreement to act as registered agent; and

(b) filed by the registered agent.

(4) The appointment of the registered agent takes effect on the registration by the Registrar of a notice filed under subsection (3).

82. Change of registered office or registered agent

(1) A resolution to change the location of a company's registered office or registered agent may be passed—

(a) despite a provision to the contrary in the articles, by the members of the company; or

(b) if authorised by the articles, by the directors of the company.

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

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

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

(a) the company's existing registered agent; or

(b) an attorney-at-law in Montserrat acting on behalf of the company for the purposes of filing the notice.

(5) The Regulations may specify circumstances in which an attorney-at-law is not entitled to file a notice of change of registered office or registered agent on behalf of a company.

(6) A change of registered office or registered agent takes effect on the date the Registrar registers the notice filed under subsection (2).

(7) As soon as reasonably practicable after registering a notice of change of registered agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration—

(a) to the company's new registered agent; and

(b) if the notice is filed by an attorney-at-law, to the former registered agent.

83. Resignation of registered agent

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

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

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

(b) if the person is, or on appointment was, a licensed company manager, provide to a person specified in subsection (3) a list of the names and addresses of licensed company managers; and

(c) file copies of—

(i) the notice of intention to resign; and

(ii) if paragraph *(b)* applies, the list of licensed company managers provided to the company.

(3) A notice under subsection (2) and, if applicable, the list of licensed company managers shall be sent—

(a) to a director of the company at the director's last known address; or

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

(4) If the company does not change its registered agent in accordance with section 82 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the company's registered agent.

(5) Unless the company has previously changed its registered agent, the resignation of a registered agent takes effect the day after the Registrar registers the notice of resignation.

(6) A registered agent wishing to rescind a notice of his intention to resign (the "**resignation notice**"**)** shall—

(a) give at least fourteen days' written notice of his intention to rescind the resignation notice on the date specified in the notice to the person to whom he sent the resignation notice; and

(b) file the notice (the **"rescission notice"**).

(7) A rescission notice shall not be filed—

(a) if the company has, by the time of filing, changed its registered agent; or

(b) less than fifteen days before the date specified in subsection (2).

(8) The rescission notice takes effect on the date specified in the rescission notice unless the company changes its registered agent before that date.

84. Registered agent ceasing to be eligible to act

(1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if—

(a) the person ceases to be a licensed company manager; or

(b) in the case of a company that has appointed a director as its registered agent as permitted by section 79(1)*(b)*, the person ceases to be a director of the company or ceases to be resident in Montserrat.

(2) If a person ceases to be eligible to act as the registered agent of a company, that person shall send to the person specified in subsection (3)—

(a) a notice—

(i) advising the company that he or she is no longer eligible to be the company's registered agent;

(ii) advising the company that it must appoint a new registered agent within ninety days of the date of the notice; and

(iii) specifying that on the expiration of the ninety-day period, he or she will cease to be the registered agent of the company, if the company has not previously changed its registered agent; and

(b) if the person ceases to be eligible to act as a registered agent because the person has ceased to be a licensed company manager, provide to a person specified in subsection (3) a list of the names and addresses of persons who are licensed company managers.

(3) A notice under subsection (2) and, if applicable, the list of licensed company managers shall be sent—

(a) to a director of the company at the director's last known address; or

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

(4) A company which is sent a notice under subsection (2) through a director or other person specified in subsection (3) shall, within ninety days of the date of the notice, change its registered agent in accordance with section 82.

(5) A person who has ceased to be eligible to act as a registered agent of a company ceases to be the registered agent of the company on—

(a) the date that the company changes its registered agent in accordance with subsection (4); or

(b) the first day following the expiry of the notice period specified in subsection (4),

whichever is earlier.

(6) A registered agent that contravenes subsection (2) or (5) commits an offence and is liable on summary conviction to a fine of $20,000.

(7) A company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of $20,000.

(8) A person does not commit an offence under this section if—

(a) the person ceases to be eligible to act as a registered agent; and

(b) after ceasing to be eligible to act, the person continues to be the registered agent of a company during the period from the date he or she ceases to be eligible to act to the date that the company appoints a new registered agent.

Division 2 - Persons with significant control over a relevant company

85. Scope of this Division

This Division applies to a company unless the company falls within a prescribed exemption.

86. Persons with significant control over a relevant company

(1) In this Act, **"person with significant control"** with respect to a relevant company means an individual who satisfies one or more of the conditions specified in subsection (2).

(2) The conditions specified for the purposes of subsection (1) are that the individual—

(a) holds, directly or indirectly, more than 25% of the issued shares in the relevant company;

(b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than 25% of the voting rights in the relevant company;

(c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the relevant company;

(d) has the right to exercise, or actually exercises, significant influence or control over the relevant company; or

(e) has the right to exercise, or actually exercises, significant influence or control over the activities of a partnership that, by the law under which partnership is governed, is not a corporate body, or a trust and paragraph *(a), (b), (c)* or *(d)* apply to—

(i) the members of the partnership, or

(ii) the trustees of the trust

in the capacity of member of the partnership or trustee.

(3) The Regulations may prescribe persons who are to be treated as individuals for the purposes of this section.

87. Registrable persons

Subject to the Regulations, a person is a registrable person in relation to a relevant company if the person is—

(a) a person with significant control over the company who falls within the criteria prescribed for the purposes of this paragraph; or

(b) a company or a foreign company with significant control over the relevant company that—

(i) if an individual, would fall within one of the conditions specified in section 86(2); and

(ii) falls within the criteria prescribed for the purposes of this paragraph.

88. Duty of relevant company to ascertain and identify registrable persons and obtain PSC information and PSC verification evidence

(1) A relevant company shall—

(a) take reasonable steps—

(i) to ascertain whether any person is a registrable person in relation to the company; and

(ii) to identify each person whom it ascertains to be a registrable person and the nature of that person's control over the company;

(b) to obtain the PSC information for each person whom it ascertains is a registrable person; and

(c) to obtain PSC verification evidence with respect to the PSC information obtained.

(2) For the purposes of ascertaining and identifying persons who are registrable persons, a relevant company is entitled to rely, without further enquiry, on the response of a person to a written notice sent in good faith by the

company, unless the company has reason to believe that the response is misleading or false.

(3) A relevant company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

89. Notice to be given by relevant company

(1) Without limiting section 88, a relevant company shall give written notice that complies with the Regulations to each person whom it knows or has reasonable cause to believe to be a registrable person in relation to it.

(2) A notice given under subsection (1) shall require the addressee no later than 4 weeks after the date of the notice—

(a) to state whether or not the person is a registrable person;

(b) if the person is a registrable person, to confirm or correct any of the PSC information that is included in the notice and supply any PSC information that is missing from the notice; and

(c) to obtain any additional PSC verification evidence.

(3) A relevant company is not required to give written notice to a person under (1) if—

(a) the relevant company has already been informed of the person's status as a registrable person and has—

(i) been supplied with the PSC information with respect to the person; and

(ii) obtained the appropriate PSC verification evidence; and

(b) in the case of a registrable person that is not another relevant company, the PSC information was provided by, or with the knowledge of, the registrable person.

(4) A relevant company may also give written notice to a registered shareholder or to a legal entity if—

(a) the company knows or has reasonable cause to believe that the registered shareholder or legal person knows or has reasonable cause to believe that the shareholder or legal entity knows the identity of—

(i) a registrable person; or

(ii) someone likely to know the identity of a registrable person; and

(b) in the case of a legal entity, the legal entity would be a registrable person if it was a company.

(5) A notice under subsection (4) may require the person to whom it is given (the addressee)—

(a) to state whether or not the addressee knows the identity of a registrable person or any person likely to have that knowledge; and

(b) if so, within four weeks of receipt of the notice, to supply, at the expense of the relevant company—

(i) any PSC information with respect to each registrable person that is within the addressee's knowledge, and to state whether the PSC information is being supplied with or without the knowledge of the person concerned; and

(ii) PSC verification evidence with respect to the PSC information supplied.

(6) A person to whom a notice is given under subsection (1) or (4) is not required by that notice to disclose any information in respect of which a claim to legal privilege could be maintained in any legal proceedings.

(7) A relevant company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

90. Records to be made and retained by a relevant company

(1) A relevant company shall make and retain for the period specified in the Regulations—

(a) a written record of the PSC information that it obtains for each person who is a registrable person in relation to the company; and

(b) a copy of the PSC verification evidence with respect to the PSC information that it obtains.

(2) A relevant company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

91. Relevant company to keep PSC information up to date

(1) If a relevant company knows or has reasonable cause to believe that, in relation to a person whose PSC information is obtained under this Division—

(a) the person ceases to be a registrable person; or

(b) any other change occurs as a result of which the PSC information for the registrable person is incorrect or incomplete,

the relevant company shall, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, give written notice that complies with the Regulations to the registrable person.

(2) A relevant company is not required to comply with subsection (1) with respect to a person if—

(a) the relevant company has already been informed that the person has ceased to be a registrable person or of the change in PSC Information; and

(b) in the case of a registrable person that is not another relevant company, the person's PSC information was provided by the registrable person or with his knowledge.

(3) A relevant company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

92. Offence of failure to comply with notice

Subject to any exemptions prescribed by the Regulations, a person to whom a notice is given under section 89 or section 91 who—

(a) fails to comply with the notice; or

(b) in purported compliance with the notice—

(i) makes a statement that the person knows to be false in a material particular; or

(ii) recklessly makes a statement that is false in a material particular

commits an offence and is liable on summary conviction to a fine of $25,000.

93. Duty of other persons to keep PSC information up to date

(1) This section applies to a person if—

(a) the person has—

(i) reason to believe that PSC information with respect to the person is included in the written records retained by a relevant company under section 90;

(ii) stated that the person is a registrable person in response to a notice received under this Division;

(b) a change occurs in the PSC information held by the relevant company with respect to the registrable person;

(c) the person knows of the change;

(d) the person has no knowledge that the company's records have been amended to reflect the change; and

(e) the person has not received a notice from the company under section 89 by the end of the period of one month beginning with the day on which the change occurred.

(2) A person to which this section applies shall—

(a) notify the relevant company of the change;

(b) state the date on which the change occurred; and

(c) give the company—

(i) any PSC information needed to update the company's records; and

(ii) the PSC verification evidence with respect to the PSC information.

(3) The duty under subsection (2) shall be complied with by the end of the period of one month beginning with the day on which the person discovered the change.

(4) A person to whom this section applies who fails comply with subsection (2) within the time period specified in subsection (3) commits an offence and is liable on summary conviction to a fine of $25,000.

94. Duty to supply information

(1) This section applies to a person if—

(a) the person is a registrable person with respect to a relevant company;

(b) the person knows that he is a registrable person with respect to the relevant company;

(c) the person has no reason to believe that the PSC information concerning the person are contained in a written record retained by the relevant company under section 90;

(d) the person has not received a notice from the company under section 89; and

(e) the circumstances described in paragraphs *(a)*, *(b)*, *(c)* and *(d)* have continued for a period of at least one month.

(2) A person to which this section applies shall—

(a) notify the relevant company of the person's status as a registrable person in relation to the company;

(b) state the date, to the best of the person's knowledge, on which the person acquired that status; and

(c) give the company—

(i) the PSC information; and

(ii) the PSC verification evidence with respect to that PSC information.

(3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which the conditions in subsection (1)*(a), (b)* and *(c)* were first met with respect to the person.

(4) A person to whom this section applies who fails comply with subsection (2) within the time period specified in subsection (3) commits an offence and is liable on summary conviction to a fine of $25,000.

95. Relevant company to file PSC information and PSC verification evidence

(1) A relevant company shall, no more than fourteen days after its incorporation, file a notice in the approved form—

(a) setting out the PSC information for each person who is a registrable person in relation to the company and the PSC verification evidence with respect to the PSC information; or

(b) stating that there are no registrable persons in relation to the company.

(2) A relevant company shall, within the time period specified in the Regulations, file notice in the approved form of—

(a) any change in the persons who are registrable persons in relation to the company;

(b) any change in the PSC information held by the company with respect to a registrable person; and

(c) the PSC verification evidence with respect to the changed PSC information.

(3) A relevant company shall, together with a notice of PSC information or changed PSC information file the PSC verification evidence with respect to the PSC information referred to in subsection (1) and (2).

(4) The Registrar shall, on receipt of a notice under subsection (1) or (2) register the information in the PSC Register together with the PSC verification evidence filed.

(5) A company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of $25,000.

96. Rectification of PSC Register by the Court

(1) If—

(a) the name of any person as a registrable person is, without sufficient cause, entered in or omitted from the PSC Register; or

(b) a relevant company makes default or unnecessary delays notifying the occurs in entering on the PSC Register, the fact that a person has ceased to be a registrable person;

the person aggrieved, any member of the company or any other person who is a registrable person in relation to the relevant company may apply to the Court for rectification of the PSC Register.

(2) On an application under subsection (1), the Court may—

(a) refuse the application; or

(b) order rectification of the register and, if it orders rectification, the Court—

(i) shall direct that notification of the rectification be given to the Registrar; and

(ii) may order the company to pay damages to the aggrieved party.

97. Protection of confidential information and gateways for disclosure

(1) For the purposes of this section and section 98, "**confidential information**" means—

(a) PSC information that is prescribed as confidential information; or

(b) PSC verification evidence filed under this Division.

(2) Subject to section 98, neither the Commission nor a director, an employee or an agent of the Commission or any person acting under the authority of the Commission, shall disclose confidential information to any person.

(3) Subsection (2) does not apply to a disclosure made—

(a) to the Financial Intelligence Unit established by the Financial Intelligence Unit Act (Act No. 12 of 2023) pursuant to a request made in accordance with the Regulations;

(b) in accordance with this Act; or

(c) to any person, body or authority prescribed as a person, body or authority to whom a disclosure of confidential information may be made.

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of $25,000.

98. Offence relating to disclosure under section 97(3)

(1) For the purposes of this section, **"a relevant disclosure"** is a disclosure of confidential information made in accordance with section 97(3).

(2) Subject to subsection (3), a person commits an offence if—

(a) he knows or suspects that a request for a relevant disclosure is being or has been made or that a relevant disclosure is being or has been made;

(b) he discloses the fact that a relevant disclosure is being or has been requested or that a relevant disclosure is being or has been made; and

(c) his disclosure in paragraph *(b)* is likely to prejudice the purpose for which the request for a relevant disclosure, or the relevant disclosure, is being or was made.

(3) It is not an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

(a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(5) In proceedings against a person for an offence under subsection (2), it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way specified in subsection (2).

(6) A person who contravenes subsection (2) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $250,000 or to both.

99. Regulations

(1) The Regulations shall, for the purposes of this Division, prescribe—

(a) identity and control information (PSC information) with respect to different types and descriptions of registrable person;

(b) types or descriptions of PSC information that are required to be verified; and

(c) the evidence to be used to verify the PSC information specified under paragraph *(b)*.

(2) The Regulations may—

(a) exempt—

(i) specified types or descriptions of company from the application of this Division; and

(ii) specified types or descriptions of persons from the requirement to comply with a notice given to them under section 89 or section 91;

(b) prescribe rules for determining whether, as provided in this section—

(i) a person has significant control over a company; and

(ii) the circumstances in which a person has control indirectly in a company;

(c) specify persons who, although falling within section 87, are considered not to be registrable persons; and

(d) specify types or descriptions of PSC information entered on the Register of Companies that are excluded from inspection under section 375.

Division 3 - Company Records

100. Keeping of documents

(1) A company whose registered agent is a director, as permitted by section 79(1)*(b)*, shall keep the following documents at its registered office—

(a) the articles of the company;

(b) the register of members;

(c) the register of directors;

(d) its PSC Register; and

(e) a copy of each notice and other document filed by the company in the previous ten years.

(2) Subject to subsection (3), a company that does not fall within subsection (1) shall keep the documents specified in subsection(1)*(a)* to *(e)* at the office of its registered agent.

(3) A company that is required to appoint a licensed company manager as its registered agent may keep a copy of its register of members or register of directors at the office of its registered agent, instead of the original register.

(4) If a company keeps a copy of its register of members or its register of directors at the office of its registered agent, as permitted by subsection (3), the company shall—

(a) within fifteen days of a change in the register, notify the registered agent, in writing, of the change; and

(b) provide the registered agent with a written record of the physical address of the place at which the original register of members or the original register of directors is kept.

(5) If the place at which the original register of members or the original register of directors is changed, a company referred to in subsection (4) shall provide the registered agent with the physical address of the new location of the records within fourteen days of the change of location.

(6) A company that contravenes subsection (1), (2), (4**)** or (5) commits an offence and is liable on summary conviction to a fine of $25,000.

101. Other records to be kept by company

(1) A company required to appoint a licensed company manager as its registered agent shall keep the following records at the office of its registered agent or at a place, within or outside Montserrat, the directors may determine—

(a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section 104; and

(b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section 104.

(2) A company that does not fall within subsection (1) shall keep the records specified in subsection (1)*(a)* and *(b)* at its registered office or at a place in Montserrat the directors determine.

(3) If a record under subsection (1**)** is kept at a place other than the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place at which the record is kept.

(4) If the place at which a record under subsection (1**)** is kept changes, the company shall provide its registered agent with the physical address of the new location of the record within fourteen days of the change.

(5) A company that fails to comply with this section commits an offence and is liable on summary conviction to a fine of $25,000.

102. Inspection of records

(1) A director of a company is entitled, on giving reasonable notice to the company—

(a) to inspect a document or record of the company—

(i) in written form;

(ii) without charge; and

(iii) at a reasonable time specified by the director; and

(b) to make a copy of or take an extract from the documents and records.

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

(a) to inspect—

(i) the articles;

(ii) the register of members;

(iii) the register of directors; and

(iv) minutes of meetings and resolutions of members and of the classes of members of which he is a member; and

(b) to make a copy of or take an extract from the documents and records.

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

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

(5) If a company—

(a) fails to permit a member to inspect a document; or

(b) permits a member to inspect a document subject to limitations,

the member may apply to the Court for an order that he be permitted to inspect the document or to inspect the document without limitation.

103. Service of process, etc. on company

(1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to—

(a) in the case of a company whose registered agent is a licensed company manager, the company's registered agent; or

(b) in the case of a company that does not fall within paragraph *(a)*, the company's registered office.

(2) The Regulations may provide for the methods by which service of a document on a company may be proved.

104. Books and records

(1) A company shall keep—

(a) minutes of each meeting of—

(i) directors;

(ii) members;

(iii) committees of directors; and

(iv) committees of members; and

(b) a copy of each resolution consented to by—

(i) directors;

(ii) members;

(iii) committees of directors; and

(iv) committees of members.

(2) The records required to be kept by a company under this Act shall be kept—

(a) in written form; or

(b) as electronic records.

(3) A company that wilfully contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

Division 4 – Accounting Records and Financial Reporting

Financial Records

105. Financial records

(1) A company shall keep financial records, including underlying documentation, that are sufficient—

(a) to show and explain its transactions;

(b) to enable its financial position to be determined with reasonable accuracy, at any time;

(c) to enable it to prepare such financial statements and make such returns as it may be required to prepare and make under this Act and the Regulations; and

(d) if applicable, to enable its financial statements to be audited in accordance with this Act and the Regulations.

(2) The financial records of a company that is required to appoint a licensed company manager as its registered agent may be kept at the office of its registered agent or at a place within or outside Montserrat as the directors may determine.

(3) The financial records of a company to which subsection (2) does not apply shall be kept at the company's registered office or at a place within Montserrat as the directors may determine.

(4) If a company to which subsection (2) applies keeps its financial records at a place other than the office of its registered agent, the company must ensure that it keeps at the office of its registered agent—

(a) financial records that disclose with reasonable accuracy the financial position of the company at intervals not exceeding three months; and

(b) a written record of the place where the financial records are kept.

(5) The accounting records under this section shall be kept for at least seven years after the end of the financial year to which they relate.

(6) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

(7) For the purposes of this section, **"underlying documentation"** includes an invoice, a receipt, a contract, any other document that evidences a transaction and any document that assists in determining the financial position of the company.

Financial Reporting

106. Requirement to file financial statements and returns

(1) A reporting company is required to prepare and file financial statements and returns under this Division.

(2) A non-profit company shall prepare and file such financial statements and returns as may be prescribed.

(3) A company shall, not later than the first day of April in each year after its incorporation or continuance under this Act, send to the Registrar an annual return in the prescribed form containing the prescribed information made up to the preceding 31 December and accompanied with the prescribed fees.

(4) A director of the company shall certify the contents of every return made under this section.

107. Annual financial returns

(1) Subject to section 108, the directors of a reporting company shall place before the members at each annual meeting of the members of the company—

(a) comparative financial statements complying with the Regulations, relating separately to—

(i) the period that began on the date the company was incorporated or continued and ended not more than twelve months after that date, or, if the company 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 financial year immediately preceding the meeting;

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

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

(2) The financial statements required by subsection (1)*(a)*(ii) 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 members at an annual meeting.

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

(4) The financial statements of a reporting company specified in section 106(1) must be prepared in accordance with such accounting standards as may be prescribed.

108. Exemption for information

(1) A reporting company may omit from its financial statements any information prescribed as information that may be so omitted.

(2) The Registrar may, on the application of a reporting company, authorise the company to omit specified information from its financial statements if the Registrar reasonably believes that disclosure of the information would be detrimental to the company.

109. Consolidated financial returns

(1) A reporting company shall keep at the office of its registered agent a copy of the financial statements of each subsidiary the accounts of which are consolidated in the financial statements of the company.

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

(3) A reporting company 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 company or a subsidiary, bar that right and make any further order the court thinks fit.

(4) A reporting company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3) and the Registrar and that person may appear and be heard in person or by an attorney-at-law.

110. Approval of directors

(1) The directors of a reporting company shall approve the financial statements referred to in section 107, and the approval shall be evidenced by the signature of one or more directors.

(2) A reporting company shall not issue, publish or circulate copies of the financial statements referred to in section 107 unless the financial statements are—

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

(b) accompanied by a report of the auditor of the company.

111. Copies of documents to be sent to members

(1) Not less than twenty-one days before each annual meeting of the members of a reporting company or before the passing of a written resolution that complies with section 73(3), instead of its annual meeting, the company shall send a copy of the documents referred to in section 107 to each member, except a member who has informed the company in writing that he does not want a copy of those documents.

(2) Despite subsection (1), a public company that is a listed company is not required, in such cases as may be prescribed, and provided any prescribed conditions are complied with, to send copies of the documents referred to in section 107 to members of the company, but may instead send them a summary financial statement.

(3) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall be in the prescribed form and contain the prescribed information.

(4) Every summary financial statement shall—

(a) state that it is only a summary of information in the company's annual accounts and the directors' report;

(b) contain a statement of the company's auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and the Regulations;

(c) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification; and

(d) state whether the auditors' report on the annual accounts contained a statement as to—

(i) the inadequacy of the accounting records or returns;

(ii) the accounts not agreeing with the records or returns; or

(iii) the failure to obtain necessary information or explanations.

112. Registrar's copies

(1) A reporting company shall send a copy of the documents referred to in section 107 to the Registrar—

(a) not less than twenty-one days before each annual meeting of the members; or

(b) immediately after the signing of a resolution under section 73 in lieu of the annual meeting,

and in any event not later than fifteen months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) On the application of a reporting company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.

(3) If a reporting company (1)—

(a) sends interim financial statements or related documents to its members; or

(b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognised exchange,

the company shall immediately send copies to the Registrar.

(4) A subsidiary company is not required to comply with this section if—

(a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary; and

(b) the consolidated or combined financial statements of the holding company are included in the documents

sent to the Registrar by the holding company in compliance with this section.

113. Certificate of solvency

(1) Subject to this section, a company that is not a reporting company shall within the period specified in section 111(1) file a certificate of solvency signed by at least one director on behalf of the directors certifying that the directors are satisfied, on reasonable grounds, that the company satisfies the solvency test at the date of the certificate.

(2) If the company has appointed an auditor, the auditor shall state in the certificate whether, in his opinion, the company satisfies the solvency test at the date of the certificate and sign the certificate.

(3) If the auditor of a company refuses to sign the solvency certificate mentioned in subsection (2), a note of his refusal shall be endorsed on the certificate.

(4) A director or auditor of a company who signs or files or concurs in the filing of a certificate required by this section which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate, commits an offence.

(5) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the filing of the certificate he believed on reasonable grounds that this section had been complied with.

(6) A company that is not required to comply with section 111 by virtue of section 112(4), is not required to comply with this section.

(7) A director or auditor who commits an offence under subsection (4) is liable on summary conviction to—

(a) imprisonment for a term of twelve months; or

(b) a fine of $50,000.

114. Audit Committee

(1) Subject to subsection (2) a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates.

(2) A public company may apply to the Registrar for an order authorising the company to dispense with an audit committee, and the Registrar may, if satisfied that the members will not be prejudiced, permit the company to dispense with an audit committee on such reasonable conditions as the Registrar considers fit.

(3) An audit committee shall review the financial statements of the company before such financial statements are approved under section 110.

(4) A member of the audit committee who calls a meeting of the audit committee shall send the auditor notice of the meeting at the same time that the notice is sent to other members of the audit committee.

(5) The auditor of a company is entitled, at the expense of the company, to attend and be heard at each meeting of the audit committee and, if so, requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(6) The auditor of a company or a member of the audit committee may call a meeting of the audit committee.

Company Auditor

115. Eligibility for appointment

(1) A person is eligible for appointment as auditor of a company only if the person—

(a) is a person in good standing as a member of the Institute of Chartered Accountants of the Caribbean or of an association of chartered or public accountants

or other similar body approved by the Commission as a reputable auditing association; or

(b) is authorised to be appointed as an auditor of companies by an instrument in writing signed by the Minister under section 158(2) of the former Companies Act.

(2) An individual or a firm may be appointed as auditor of a company.

116. Effect of appointment of partnership

(1) The following provisions apply to the appointment as auditor of a company of a partnership constituted under the law of Montserrat or under the law of any other country or territory in which a partnership is not a legal person.

(2) The appointment is, unless a contrary intention appears, an appointment of the partnership and not of the partners.

(3) If the partnership ceases, the appointment shall be treated as extending to—

(a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and

(b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For the purpose of subsection (3)—

(a) a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and

(b) a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) If the partnership ceases and no person succeeds to the appointment under subsection (3), the appointment may with the consent of the company be treated as extending to

a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company.

117. Ineligibility on ground of lack of independence

A person is ineligible for appointment as auditor of a company if—

(a) the person is an officer or employee of the company;

(b) the person is a partner or employee of such a person, or a partnership of which such a person is a partner, or if he is ineligible by virtue of paragraph *(a)* or *(b)* for appointment as auditor of any affiliate of the company; or

(c) there exists between the person and any associate of his and the company or any affiliate a connection of any such description as may be prescribed.

118. Effect of ineligibility

(1) No person shall act as auditor of a company if ineligible for appointment to the office.

(2) If during his term of office, an auditor of a company becomes ineligible for appointment to the office, he shall vacate his office and shall give notice in writing to the company concerned that he has vacated his office by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of subsection (1) or fails to give notice of vacating his office as required by subsection (2) commits an offence.

(4) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was or had become ineligible for appointment.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of $50,000.

119. Appointment of auditor

(1) Subject to section 120, the members of a company shall, by ordinary resolution, at the first annual meeting of members 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 139(1)*(d)* is eligible for appointment under subsection (1).

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

(4) The members of a company may, at by ordinary resolution at the meeting at which the auditor is appointed, fix the auditor's remuneration.

(5) If the members of a company do not fix the auditor's remuneration in accordance with subsection (4), the directors may, by resolution, fix the auditor's remuneration.

120. Dispensing with auditor

(1) The members of a company other than a reporting company may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is not valid until the next succeeding annual meeting of members.

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

121. Cessation of office

(1) An auditor of a company ceases to hold office when he—

(a) dies or resigns; or

(b) is removed pursuant to section 122.

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

122. Removal of auditor

(1) The members of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 124.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 123.

123. Filling auditor vacancy

(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

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

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

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

124. Court appointed auditor

(1) If a company does not have an auditor, the court may, upon the application of a member or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the members.

(2) Subsection (1) does not apply if the members have resolved under section 120 not to appoint an auditor.

125. Auditor rights to notice

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

126. Required attendance

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

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

(3) Subsection (1) applies, with such modifications as the circumstances require, to a former auditor of the company.

127. Right to comment

(1) An auditor who—

(a) resigns;

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

(c) receives a notice or otherwise learns of a meeting of directors or members 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 members at which a resolution referred to in section 120 is to be proposed, may submit to the company 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 company shall immediately send a copy of the

statement to every member entitled to receive notice of any meeting referred to in section 125 and to the Registrar.

128. Examination by auditor

(1) An auditor of a company shall 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 members, except such financial statements or parts of the financial statements that relate to the immediately preceding financial year referred to in section 107(1)*(a)*(ii).

(2) Despite section 129, an auditor of a company 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 company.

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

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

129. Right to inspect

(1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor—

(a) such information and explanations; and

(b) such access to records, documents, books, accounts and vouchers of the company 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 section 128 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company shall—

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company 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 section 128; and

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

130. Detected error

(1) A director or an officer of a company shall immediately notify the audit committee and the auditor of any error or mis-statement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported to the company and in his opinion, the error or misstatement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or misstatement in a financial statement of the company, the directors shall—

(a) prepare and issue revised financial statements; or

(b) otherwise inform the members of the error or misstatement,

and, if the company is one that is required to comply with section 112, inform the Registrar of the error or misstatement in the same manner as the directors inform the members of the error or mis-statement.

131. Immunity of auditor

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.

PART 6—DIRECTORS AND SECRETARY

Management by Directors

132. Management by directors

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

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

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

(4) Subject to subsections (5)—

(a) a public company shall have at least three directors and any other company shall have at least one director; and

(b) subject to paragraph *(a)*, the number of directors of a company may be fixed by, or in the manner provided in, the articles.

(5) Only an individual may be the director of a public company.

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

133. First directors

Each person named in the application to incorporate as a proposed director holds office as director from the incorporation of the company until the person ceases to be a director in accordance with this Act.

134. Committees of directors

(1) Subject to the articles and to subsection (2), the directors may—

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

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

(2) Despite the articles, the directors shall not delegate the following powers to a committee of directors—

(a) to amend the articles;

(b) to designate a committee of directors;

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

(d) to appoint or remove directors;

(e) to appoint or remove an agent;

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

(g) to make a determination under section 52(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(h) to exercise any other power that may be prescribed.

(3) Subsection (2)*(b)* and *(c)* do not prevent a committee of directors, if authorised by the directors, from—

(a) appointing a subcommittee; and

(*b)* delegating powers exercisable by the committee to the subcommittee.

(4) If the directors of a company delegate their powers to a committee of directors under subsection (1), the directors are responsible for the exercise of that power by the committee unless the directors believed on reasonable grounds before the exercise of the power that the committee would exercise the power in conformity with

the duties imposed on directors of the company by this Act and the articles.

Secretary

135. Public company required to have a secretary

(1) A public company shall have a secretary who—

(a) subject to subsections (2) and (3), shall be appointed by the director or directors, or if provision is made in the by-laws of the company for the appointment, in accordance with that provision; and

(b) may be an individual, a corporation or a firm.

(2) The directors of a public company shall take all reasonable steps to ensure that the secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

(3) For the purpose of this section a person—

(a) who, on the commencement date, held the office of secretary, assistant secretary or deputy secretary of a public company;

(b) who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a public company;

(c) who is a member in good standing of the Institute of Chartered Accountants of Montserrat, the Institute of Chartered Secretaries and Administrators or the Chartered Institute of Public Finance and Accountancy; or

(d) who is an attorney-at-law,

may, unless the directors have reasonable cause to believe otherwise, be assumed by the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(4) A public company that carries on business for more than one month without complying with subsection (1)

commits an offence and is liable on summary conviction to a fine of $20,000.

136. Notice of change of secretary

(1) A company shall file a notice in the approved form of—

(a) a change in the secretary of the company, whether as the result of the appointment of a person as secretary or a person ceasing to hold office as secretary, or both;

(b) a change in the name or address of the secretary of the company.

(2) A notice under subsection (1) shall be filed within fourteen days of—

(a) the change occurring, in the case of the appointment of the secretary or the secretary ceasing to hold office; or

(b) the company first becoming aware of the change, in the case of the death of the secretary or a change in the name or address of the secretary.

(3) A company that fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of $20,000.

137. Duties of secretary

The secretary of a public company has the following duties—

(a) maintaining the company's register of members, directors and charges;

(b) maintaining the PSC register;

(c) preparing for meetings of members and directors, including preparing and sending out notices of each meeting;

(d) preparing and keeping minutes of meetings of the members and the directors, including meetings of each committee of members or directors;

(e) ensuring that the company files all returns, notices and other documents required to be filed by this Act or the regulations; and

(f) such other duties as may be specified in the articles or by-laws or in the instrument appointing him.

By-laws and Organisational Meeting

138. Power to make by-laws

(1) Unless the articles, by-laws or a unanimous members' agreement provide otherwise, the directors of a company may by resolution make, amend, or repeal a by-law for the regulation of the business or affairs of the company.

(2) The directors of a company shall submit a by-law, or an amendment or repeal of a by-law made under subsection (1) to the members of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law and the members 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 members pursuant to subsection (2); or

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

and, if the by-law, amendment or repeal is confirmed or amended by the members, 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 members as required by subsection (2), or is rejected by the members , 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 members.

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

139. Organisational meeting

(1) After the incorporation of a company, a meeting of the directors of the company shall 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 an auditor to hold office until the first annual meeting of members;

(e) make banking arrangements; and

(f) transact any other business.

(2) An incorporator or a director may call a meeting of directors under subsection (1) by giving not less than seven clear days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

(3) Subsection (1) does not apply to a company to which a certificate of merger or consolidation has been issued under section 192(4).

Appointment, Removal and Resignation of Directors

140. Persons disqualified for appointment as director

(1) A person is disqualified from being appointed as a director of a company if the person—

(a) is an individual who is under eighteen years of age;

(b) is an undischarged bankrupt;

(c) has been declared by a court or tribunal in Montserrat or elsewhere to be of unsound mind;

(d) is subject to a disqualification order made under section 166; or

(e) in respect of a particular company, disqualified by the articles from being a director of the company.

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

141. Shareholding not required

Unless the articles of a company provide otherwise, a director of a company need not hold shares in the company.

142. Consent to act as director

A person shall be appointed as the director or alternate director of a company or nominated as a reserve director only if he consents in writing to the appointment.

143. Appointment of directors

(1) Directors of a company may be appointed—

(a) unless the articles provide otherwise, by the members; or

(b) if the articles permit, by the directors.

(2) A director is appointed for such term as may be specified on appointment.

(3) Unless the articles of a company provide otherwise, the directors of a company may appoint a director to fill a vacancy on the board.

(4) For the purposes of subsection (3)—

(a) there is a vacancy on the board if a director dies or in the case of a director that is not an individual, ceases

to exist, or otherwise ceases to hold office as a director before the expiration of his term of office; and

(b) the directors may not appoint a director for a term exceeding the term that remained when the person who has ceased to be a director ceased to hold office.

(5) A director holds office until—

(a) his or her successor takes office; or

(b) his or her earlier death, resignation or removal.

(6) If a company has only one member who is an individual and that member is also the sole director of the company, despite the articles, the member may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 140 as a reserve director of the company to act in that director's place in the event of the director's death.

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

(a) before the death of the sole member—

(i) the person resigns as reserve director; or

(ii) the sole member revokes the nomination in writing; or

(b) the sole member who nominated the person as a reserve director ceases to be the sole member and director of the company for any reason other than his death.

144. Removal of directors

(1) A director of a company may be removed from office by resolution of the members of the company.

(2) Subject to the articles, a resolution under subsection (1) may only be passed—

(a) at a meeting of the members called for the purpose of removing the director; or

(b) by a written resolution passed by at least 75% of the votes of the members of the company who are entitled to vote.

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

(4) If the holders of any class of shares of a company 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 of shares.

(5) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed, or, if the vacancy is not so filled, it may be filled by the directors in accordance with section 143(3).

145. Resignation of director

(1) A director of a company may resign office by giving written notice of his resignation to the company and his resignation takes effect from—

(a) the date the company receives the notice of resignation; or

(b) a later date specified in the notice.

(2) A director of a company shall resign immediately if he is disqualified to act as a director under section 140.

146. Liability of former directors

A director who vacates office is liable under any provision of this Act that impose liabilities on a director for an act or omission or decisions made while he was a director.

147. Validity of acts of director

The acts of a person as a director are valid despite—

(a) a defect in his appointment as a director; or

(b) his disqualification to act as a director under section 140.

148. Register of directors

(1) A company shall maintain a register of directors setting out—

(a) the name and address of—

(i) each director of the company; or

(ii) each person who is nominated as reserve director of the company;

(b) the date on which each director is appointed, or nominated as a reserve director, of the company;

(c) the date on which each director ceased to be a director of the company;

(d) the date on which a person's nomination as a reserve director ceased to have effect; and

(e) other information as may be prescribed.

(2) Subject to the Regulations, the register of directors shall be in a form approved by the directors.

(3) The register of directors is *prima facie* evidence of the matters directed or authorised by this Act to be set out in the register of directors.

149. Notice of change of directors

(1) A company shall file a notice in the approved form of—

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

(b) a change in the name or address of a director of the company

(2) A notice under subsection (1) shall be filed within fourteen days of—

(a) the change occurring, in the case of the appointment of a director or a director ceasing to hold office; or

(b) the company first becoming aware of the change, in the case of the death of a director or a change in the name or address of a director.

(3) A company that fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of $20,000.

150. Emoluments of directors

Subject to the articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered to the company.

Duties of Directors and Conflicts

151. Duties of directors

(1) Subject to this section, a director of a company, in exercising his powers or performing his duties, shall act honestly and in good faith and in what the director believes to be in the best interests of the company.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if the articles permit, act in a manner which he believes is in the best interests of that company's parent even if it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director—

(a) if the articles permit; and

(b) with the prior agreement of the shareholders, other than its parent,

act in a manner which he believes is in the best interests of that company's parent even if it may not be in the best interests of the company.

(4) A director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or

performing duties as a director in connection with the carrying out of the joint venture, if the articles permit, act in a manner which he believes is in the best interests of a shareholder even if it may not be in the best interests of the company.

152. Powers to be exercised for proper purpose

A director shall exercise his powers for a proper purpose and shall not act or agree to the company acting in a manner that contravenes this Act or the articles of the company.

153. Standard of care

A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation—

(a) the nature of the company;

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him.

154. Reliance on records and reports

(1) Subject to subsection (2), a director of a company, when exercising his powers or performing his duties, is entitled to rely on books, records, financial statements and other information prepared or supplied and the register of members and on professional or expert advice given by—

(a) an employee of the company who the director believes on reasonable grounds is reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert on matters which the director believes on reasonable grounds are within the person's professional or expert competence; and

(c) any other director or committee of directors on which the director did not serve, in relation to matters within the director's or committee's designated authority.

(2) Subsection (1) applies only if the director—

(a) acts in good faith;

(b) makes proper inquiry if the need for the inquiry is indicated by the circumstances; and

(c) is not aware that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

155. Disclosure of interest

(1) Subject to subsection (3), a director of a company shall, immediately after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company.

(2) The Regulations may prescribe circumstances in which a director has an interest in a transaction for the purposes of this section and section 156.

(3) A director of a company is not required to comply with subsection (1) if—

(a) the transaction or proposed transaction is between the director and the company; and

(b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

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

(5) Subject to section 156(1), a director's failure to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.

(6) For the purposes of subsection (1), a director makes a disclosure to the board only if he brings it to the attention of each director on the board.

(7) A director who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

156. Avoidance by company of transactions in which director is interested

(1) Subject to this section, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was—

(a) disclosed to the board in accordance with section 155 before the company entered into the transaction; or

(b) not required to be disclosed under section 155(3).

(2) Despite subsection (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if—

(a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or

(b) the company received fair value for the transaction.

(3) For the purposes of subsection (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.

(4) Subject to the articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may—

(a) vote on a matter relating to the transaction;

(b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and

(c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.

(5) The avoidance of a transaction under subsection (1) does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

(a) from a person other than the company **("the transferor")**;

(b) for valuable consideration; and

(c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

Proceedings of directors and miscellaneous provisions

157. Meetings of directors

(1) Subject to the articles, the directors of a company may meet at a time, manner and place that they determine within or outside Montserrat.

(2) Subject to the articles, a director may convene a meeting of directors.

(3) A director shall be deemed to be present at a meeting of directors if—

(a) he participates by telephone or other electronic means; and

(b) all directors participating in the meeting are able to hear each other.

158. Notice of meeting of directors

(1) Subject to a requirement as to notice in the articles, a director shall be given reasonable notice of a meeting of directors and the notice must include the date, time and place of the meeting and the matters to be discussed.

(2) Despite subsection (1), subject to the articles, a meeting of directors held in contravention of subsection (1) is valid if each director, or the majority of directors specified in the articles entitled to vote at the meeting, waive the notice of the meeting.

(3) For the purposes of subsection (2), a director's presence at the meeting constitutes his waiver of notice.

(4) The inadvertent failure to give notice of a meeting to a director in accordance with subsection (1), or the fact that a director has not received the notice, does not invalidate the meeting.

159. Quorum for meetings of directors

(1) The quorum for a meeting of directors is that fixed by the articles.

(2) If a quorum is not fixed by the articles, a meeting of directors is properly constituted if, at the commencement of the meeting, half of the total number of directors are present in person or by alternate.

(3) No business may be transacted at a meeting of directors if a quorum is not present.

160. Resolution of directors

(1) A resolution of directors may be passed—

(a) at a meeting of directors; or

(b) subject to the articles, as a written resolution.

(2) Subject to the articles, a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.

(3) A written resolution is a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for a notice—

(a) by the majority of the votes of the directors entitled to vote on the resolution as specified in the articles; or

(b) in the absence of any provision in the articles, by each director who is entitled to vote on the resolution.

(4) A written resolution may consist of several documents, including written electronic communications, in the same form, each signed by a director.

161. Appointment of alternate directors

(1) Subject to the articles of a company, a director of the company may appoint as an alternate another director or person who is not disqualified for appointment as a director under section 140(1) to—

(a) exercise the appointing director's powers; and

(b) carry out the appointing director's responsibilities,

in relation to taking decisions by the directors in the absence of the appointing director.

(2) The appointing director may terminate an alternate's appointment.

(3) The appointment and termination of an alternate director shall be in writing and the appointing director shall give a company written notice of an appointment or termination of an alternate director—

(a) within the period specified in the articles; or

(b) if no period is specified in the articles, as soon as reasonably practicable.

(4) The termination of the appointment of an alternate director takes effect when a company receives written notice of the termination.

(5) An alternate director—

(a) has no power to appoint an alternate of the appointing director or of the alternate director; and

(b) does not act as an agent of or for the appointing director.

162. Rights and duties of alternate directors

(1) An alternate director has the same rights as the appointing director in relation to a directors' meeting and any written resolution circulated for written consent.

(2) An alternate director's exercise of the power of an appointing director in relation to decision making by the directors, is as effective as if the powers were exercised by the appointing director.

(3) An alternate director is liable for his acts and omissions as alternate director and sections 151 to 156 apply to an alternate director.

163. Agents

(1) The directors of a company may appoint any person, including a director, as an agent of the company.

(2) Subject to the articles of a company, an agent of a company has the authority and powers of the directors, provided for in the articles or in the resolution of directors appointing the agent, except the authority or power to—

(a) amend the articles;

(b) change the company's registered office or agent;

(c) designate a committee of directors;

(d) delegate powers to a committee of directors;

(e) appoint or remove a director;

(f) appoint or remove an agent;

(g) fix a director's emoluments;

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

(i) make a determination under section 52(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(j) authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Montserrat.

(3) If the directors appoint a person as an agent of the company, the directors may authorise the agent to appoint a substitute or delegate to exercise the powers conferred on the agent by the company.

(4) The directors may—

(*a*) remove an agent appointed under subsection (1); and

(*b*) revoke or vary a power conferred on an agent under subsection (2).

164. Indemnification

(1) Subject to subsection (2) and its articles, a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings a person who—

(a) is or was a party or is threatened to be made a party to a threatened, pending or completed civil, criminal, administrative or investigative proceeding in his capacity as a director of the company; or

(b) is or was, at the request of the company, serving as a director of or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) applies to a person referred to in that subsection only if the person—

(a) acted honestly and in good faith and in what he believed to be in the best interests of the company; and

(b) in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

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

(a) the company's parent, in the circumstances specified in section 151(2) or (3); or

(b) a shareholder of the company, in the circumstances specified in section 151(4).

(4) The termination of proceedings by a judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not create a presumption that the person—

(a) did not act honestly and in good faith and with a view to the best interests of the company; or

(b) had reasonable cause to believe that his conduct was unlawful.

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

(6) A company may pay expenses, including legal fees, incurred by a former director in defending legal, administrative or investigative proceedings in advance of the final disposition of the proceedings on receipt of an undertaking by or on behalf of the former director to repay the amount if—

(a) it is determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1); and

(b) on other terms and conditions, if any, that the company deems appropriate.

(7) The indemnification and advancement of expenses provided by or granted under this section is not exclusive of other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise—

(a) as to acting in the person's official capacity; and

(b) as to acting in another capacity while serving as a director of the company.

(8) If a person referred to in subsection (1) successfully defends proceedings referred to in subsection (1), the person is entitled to be indemnified against expenses, including legal fees, and judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

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

165. Insurance

A company may purchase and maintain insurance in relation to a person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 164.

Disqualification of Directors

166. Disqualification order

(1) If, on the application of the Registrar, the Court determines that an individual is unfit to be concerned in the management of a company, it may order that, without the prior leave of the Court, the person may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period—

(a) beginning—

(i) with the date of the order; or

(ii) if the individual 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 shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Montserrat 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 individual, the Registrar shall give that individual not less than ten days' notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a company, the Registrar and any individual 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 an attorney-at-law.

(5) The Registrar shall register any order made under this section in a Register of Disqualified Directors to be maintained by him for that purpose.

(6) A person commits an offence if, during the period for which an order made under subsection (1) against him is in force, the person acts as the director of a company or is, in any way, directly or indirectly, concerned with the management of a company.

(7) A person who commits an offence under subsection (6) is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

PART 7—REGISTRATION OF CHARGES

167. Interpretation for this Part

(1) In this Part—

"charge" means any form of security interest over property, wherever situated, other than an interest arising by operation of law;

"effective date" means—

(a) in the case of a former Act company, the date the former Act company is re-registered as a company under Schedule 2;

(b) in the case of a company that is continued under this Act, the date of the company's continuation; or

(c) in any other case, the date on which this Act comes into operation;

"liability" includes contingent and prospective liabilities;

"property" includes future property;

"relevant charge" means a charge created on or after the effective date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated which—

(a) was, immediately before its acquisition, the subject of a charge; and

(b) remains subject to that charge after its acquisition.

(3) For the purposes of subsection (2), the date of creation of the charge is deemed to be the date the property is acquired.

168. Creation of charges by a company

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

(2) The governing law of a charge created by a company may be the law of the jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent of, and in accordance with the requirements of the governing law.

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

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

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

169. Company to maintain register of charges

(1) A company shall maintain a register of each relevant charge created by the company over its property setting out—

(a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;

(b) a short description of the liability secured by the charge;

(c) a short description of the property charged;

(d) the name and address of the trustee for the security or, if there is no trustee, the name and address of the chargee;

(e) unless the charge is a security to bearer, the name and address of the holder of the charge; and

(f) details of a prohibition or restriction, if any, contained in the instrument creating the charge on the company's power to create a future charge ranking in priority to or equally with the charge.

(2) A company shall keep a copy of the register of charges—

(a) in the case of a company that is required to appoint a licensed company manager as its registered agent, at the office of its registered agent; or

(b) in the case of any other company, at its registered office.

(3) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of $25,000.

170. Registration of charges

(1) If a company creates a relevant charge over its property, an application to the Registrar to register the charge may be made by—

(a) the company, or an attorney-at-law in Montserrat authorised to act on its behalf; or

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

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

(3) The Registrar shall keep, with respect to each company, a Register of Registered Charges containing the information prescribed.

(4) If the Registrar is satisfied that the requirements of this Part as to registration are complied with, on receipt of an application under subsection (2), the Registrar shall immediately—

(a) register the charge in the Register of Registered Charges kept by him for that company;

(b) issue a certificate of registration of the charge; and

(c) send a copy of the certificate of registration to the company and to the chargee.

(5) The Registrar shall state the date and time on which a charge is registered—

(a) in the Register of Registered Charges; and

(b) on the certificate of registration.

(6) A certificate issued under subsection (4) is conclusive evidence that—

(a) the requirements of this Part as to registration have been complied with; and

(b) the charge referred to in the certificate was registered on the date and time stated in the certificate.

(7) A charge that is not registered under this section is void against a liquidator of the company.

171. Variation of registered charge

(1) If there is a variation in the terms of a charge registered under section 170, an application for the variation to be registered may be made by—

(a) the company, or an attorney-at-law in Montserrat authorised to act on its behalf; or

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

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

(3) On receipt of an application under subsection (2), the Registrar shall immediately—

(a) register the variation of the charge;

(b) issue a certificate of variation; and

(c) send a copy of the certificate of variation to the company and the chargee.

(4) The Registrar shall state in the Register of Registered Charges and on the certificate of variation the date and time on which a variation of charge was registered.

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

172. Satisfaction or release of charge

(1) A notice of satisfaction or release in the approved form may be filed under this section if—

(a) each liability secured by the charge registered under section 170 is paid or satisfied in full; or

(b) a charge registered under section 170 ceases to affect a company's property.

(2) A notice of satisfaction or release shall—

(a) state whether—

(i) the charge is paid or satisfied in full or;

(ii) the charge ceases to affect the company's property; and

(b) if the charge ceases to affect the company's property, identify the property of the company that the charge ceases to affect, stating whether this is the whole or part of the company's property.

(3) A notice of satisfaction or release may be filed by—

(a) the company or an attorney-at-law in Montserrat authorised to act on behalf of the company;

(b) a person eligible to act as the registered agent of a company in accordance with section 79; or

(c) an attorney-at-law in Montserrat, acting on behalf of the chargee.

(4) If the notice of satisfaction or release is filed by or on behalf of the company it shall be—

(a) signed by the chargee; or

(b) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice.

(5) If the Registrar is satisfied that a notice filed under subsection (1) complies with subsection (2) or (4) as the case may be the Registrar shall immediately—

(a) register the notice; and

(b) issue a certificate of satisfaction, release or partial satisfaction or release of the charge and send a copy of the certificate of the satisfaction, release or partial release of the charge to the company and to the chargee.

(6) The Registrar shall state the date and time on which the notice filed under subsection (1) was registered in—

(a) the Register of Registered Charges; and

(b) on a certificate issued under subsection (5).

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

173. Filing of application under section 170 or 171 by or on behalf of chargee

(1) An application for the registration of a charge under section 170 or for the variation of a charge under section

171 made by the chargee, or a person authorised to act on behalf of the chargee, may only be filed by—

(a) a person eligible to act as the registered agent of a company in accordance with section 79; or

(b) an attorney-at-law in Montserrat, acting on behalf of the chargee or the person authorised to act on behalf of the chargee.

(2) Subject to subsection **(**3), an application or notice referred to in subsection (1) shall be accompanied by a written notice in the approved form stating the full name and address of a person in Montserrat who is authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(3) Subsection (2) does not apply to a chargee that is—

(a) a company incorporated or continued under this Act;

(b) a foreign company registered under Part 12;

(c) a limited partnership formed under the Limited Partnership Act (Cap. 11.10); or

(d) an individual.

(4) A chargee may give the Registrar written notice in the approved form of a change in the person in Montserrat authorised by the chargee to accept, on its behalf, documents required to be sent to the chargee by the Registrar under this Part.

(5) Only a person specified in subsection (1)*(a)* or *(b)* may file a notice under subsection (4).

(6) The Registrar complies with this Part in relation to sending a document to a chargee, by sending the document to the person in Montserrat most recently notified to the Registrar as the person authorised by the chargee to accept a document on its behalf.

174. Priority of relevant charges

(1) Subject to subsection (3), a relevant charge on a company's property that is registered in accordance with section 170 has priority over—

(a) a relevant charge on the property that is subsequently registered in accordance with section 170; and

(b) a relevant charge on the property that is not registered in accordance with section 170.

(2) Charges created on or after the effective date that are not registered shall rank among themselves in the order in which they would rank if this section was not in force.

(3) In the event of a conflict between the priority of relevant charges under this Act and under the Registered Land Act, the provisions of the Registered Land Act prevail.

175. Priority of other charges

A charge created before the effective date—

(a) shall continue to rank in the order in which it would have ranked had section 170 not come into force; and

(b) if the charge would have taken priority over a charge created on or after the effective date, that charge shall continue to take priority after the effective date.

176. Exceptions to sections 174 and 175

Despite sections 174 and 175—

(a) the order of priorities of charges is subject to—

(i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or

(ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and

(b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the company's power to create a future charge ranking in priority to or equally with the charge.

PART 8—RECEIVERS AND RECEIVER-MANAGERS

177. Disqualified receivers

(1) A person may not be appointed a receiver or receiver-manager of any assets of a company, and may not act as such a receiver or receiver-manager, if the person—

(a) is a body corporate;

(b) is an undischarged bankrupt; or

(c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1), 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 date.

178. Functions of receivers and receiver-managers

(1) A receiver of any property of a company may, subject to the rights of 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 company.

(2) A receiver of a company may, if he is also appointed manager of the company, carry on any business of the

company to protect the security interest of those on behalf of whom he is appointed.

179. Directors' powers stopped

When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.

180. Duty under court direction

A receiver or receiver manager of a company appointed by the court shall act in accordance with the directions of the court.

181. Duty under instrument

A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with that instrument and any directions of the court given under section 183.

182. Duty of care

A receiver or receiver-manager of a company appointed under an instrument shall—

(a) act honestly and in good faith; and

(b) deal with any property of the company in his possession or control in a commercially reasonable manner.

183. Directions by Court

Upon an application by a receiver or receiver-manager of a company, 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—

(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 by 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 or business of the company;

(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 directions on any matter relating to the duties of the receiver or receiver-manager.

184. Duties of receivers, etc.

A receiver or receiver-manager of a company shall—

(a) immediately give notice of his appointment to the Registrar, and of his discharge;

(b) take into his custody and control the property of the company 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 company for the moneys of the company 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 shall be available during usual business hours for inspection by the directors of the company;

(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 Registrar 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.

185. Liability of receivers, etc.

(1) A receiver of assets of a company appointed by the Court or under the powers contained in any instrument—

(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 to be 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 that date.

186. Notice of receivership

If a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver-manager has been appointed.

187. Floating charges priorities

(1) If a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or if possession is taken, by or on behalf of any debenture holders of a company, of any property of the company that is subject to a floating charge, then, if the company is not at the time in the course of liquidation, any preferential debts within the meaning of section 244 shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in

respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the company that are available for the payment of general creditors.

188. Statement of affairs

(1) If a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 189 referred to as the "receiver", is appointed by the Court or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 189—

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) within fourteen days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement in accordance with section 189 as to the affairs of the company;

(c) the receiver shall, within two months after receipt of the statement, send to the—

(i) Registrar, 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 Registrar, also a summary of the statement and of his comments, if any, thereon;

(ii) company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) trustee of the trust deed, a copy of the statement and those comments, if any; and

(iv) holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.

(2) The receiver shall within two months or such longer period as the court may allow after —

(a) the expiration of the period of twelve months from the date of his appointment, and after every subsequent period of twelve months; and

(b) he ceases to act as receiver of the assets of the company, send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show the—

(a) 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) 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, if subsection (1) 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 company is being wound up, this section and section 189 apply even though 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.

189. Contents of statement

(1) The statement as to the affairs of a company required by section 188 to be submitted to the receiver or his successor shall show, as at the date of the receiver's appointment—

(a) the particulars of the company's assets, debts and liabilities;

(b) the names, addresses and occupations of the company's creditors;

(c) the security interests held by the company'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 statement of affairs of the company shall 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 or by such persons specified in subsection (3) as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement.

(3) The following are specified for the purposes of subsection (2)—

(a) a person who is or has been an officer of the company;

(b) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) a person who is in the employment of the company, or has been in the employment of the company within that year, and, in the opinion of the receiver, is capable of giving the information required; or

(d) a person who is, or has been within that year an officer of, or in the employment of, an affiliate.

(4) Any person making or verifying the statement of affairs of a company, or any part of it, shall 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 9—MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS AND ARRANGEMENTS

190. Interpretation for purposes of this Part

(1) In this Part—

"consolidated company" means the new company that results from a consolidation;

"consolidation" means the consolidating of two or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation;

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

"parent company" means a company that owns at least 90% of the outstanding shares of each class of shares in another company;

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

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

(2) The definitions of **"subsidiary"** and **"parent"** specified in section 2 do not apply to this Part.

191. Approval of merger and consolidation

(1) Two or more companies may merge or consolidate in accordance with this section.

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

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

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, specifying each class entitled to vote on the merger or consolidation; and

(ii) a specification of each class, if any, entitled to vote as a class;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination of each; and

(d) in respect of a merger, a statement of any amendment to the articles of the surviving company to be brought about by the merger.

(3) In the case of a consolidation, the plan of consolidation shall have annexed to it articles that comply with section 7 to be adopted by the consolidated company.

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

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

(a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of each class of shares that are entitled to vote on the merger or consolidation as a class if the articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles, would entitle the class to vote on the proposed amendment as a class;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

192. Registration of merger and consolidation

(1) After approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company containing—

(a) the plan of merger or consolidation;

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

(c) the manner in which the merger or consolidation was authorised with respect to each constituent company.

(2) The articles of merger or consolidation shall be filed with the Registrar with—

(a) in the case of a merger, any resolution to amend the articles of the surviving company; and

(b) in the case of a consolidation, articles for the consolidated company that comply with section 7.

(3) If the Registrar is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with the requirements of section 14 and is a name under which the company could be registered under section 15, the Registrar shall—

(a) register—

(i) the articles of merger or consolidation; and

(ii) in the case of a merger, an amendment to the articles of the surviving company or, in the case of a consolidation, the articles of the consolidated company;

(b) in the case of a consolidation, allot a unique number to the consolidated company; and

(c) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.

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

193. Merger with subsidiary

(1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of a company, in accordance with this section.

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

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

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, and

(ii) the number of shares of each class of shares in each subsidiary company owned by the parent company;

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and

(d) a statement of any amendment to the articles of the surviving company to be brought about by the merger.

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

(4) The parent company shall give a copy of the plan of merger or an outline of the plan of merger to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

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

(a) the plan of merger;

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

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

(6) The articles of merger shall be filed with the Registrar together with any resolution to amend the articles of the surviving company.

(7) If the Registrar is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with section 14 and is a name under which the company could be registered under section 15, the Registrar shall—

(a) register—

(i) the articles of merger, and

(ii) any amendment to the articles of the surviving company; and

(b) issue a certificate of merger.

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

194. Effect of merger or consolidation

(1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on a date subsequent to the registration of the articles of merger or consolidation, not exceeding thirty days, as stated in the articles of merger or consolidation.

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

(a) the surviving company or the consolidated company in so far as is consistent with its articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the articles of the surviving company are automatically amended to the extent, if any, that changes in its articles are contained in the articles of merger;

(c) in the case of a consolidation, the articles filed with the articles of consolidation are the articles of the consolidated company;

(d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each constituent company.

(3) If a merger or consolidation occurs—

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

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent of a constituent company, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

195. Merger or consolidation with foreign company

(1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Montserrat in accordance with this section, including if one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Montserrat are incorporated.

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

(a) a company shall comply with the provisions of this Act with respect to merger or consolidation and a company incorporated under the laws of a jurisdiction outside Montserrat shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Montserrat, it shall file—

(i) an agreement that a service of process may be effected on it in Montserrat in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company that is a company registered under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company that is a company registered under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of its registered agent as its agent to accept service of process in proceedings referred to in subparagraph (i);

(iii) an agreement that it will promptly pay to a dissenting member of a constituent company that is a company registered under this Act the amount, if any, which the dissenting member is entitled to under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction if it is incorporated; or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 194 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Montserrat, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 194 except in so far as the laws of the other jurisdiction otherwise provide.

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

196. Disposition of assets

Subject to the articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the

enforcement of a sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets of the company if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

(a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;

(b) on approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

197. Redemption of minority shares

(1) Subject to the articles of a company—

(a) members of the company holding 90% of the votes of the outstanding shares entitled to vote; and

(b) members of the company holding 90% of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

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

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

198. Arrangement

(1) For the purposes of sections 198 and 199, **"arrangement"** means—

(a) an amendment to the articles;

(b) a reorganisation or reconstruction of a company;

(c) a merger or consolidation of one or more companies that are companies registered under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(d) a separation of two or more businesses carried on by a company;

(e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination of each;

(f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination of each;

(g) a dissolution of a company; or

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

(2) If the directors of a company determine that it is in the best interests of the company or the creditors or members of a company, the directors of the company may approve a plan of arrangement that contains details of the proposed arrangement, even if the proposed arrangement

may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) On approval of the plan of arrangement by the directors, the company shall apply to the Court for approval of the proposed arrangement.

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

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

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

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 200;

(d) conduct a hearing and permit an interested person to appear; and

(e) approve or reject the plan of arrangement as proposed or with the amendments it may direct.

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

(6) The directors of the company, on confirming the plan of arrangement, shall—

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

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

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

(a) the plan of arrangement;

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

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

(8) The articles of arrangement shall be filed with the Registrar who shall register them.

(9) On the registration of the articles of arrangement, the Registrar shall issue a certificate certifying that the articles of arrangement have been registered.

(10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on a date subsequent to the date of registration, not exceeding thirty days, as is stated in the articles of arrangement.

199. Arrangement when company in voluntary liquidation

The voluntary liquidator of a company may approve a plan of arrangement under section 198 in which case, that section applies as if "**voluntary liquidator**" was substituted for **"directors"** and subject to such other modifications as are appropriate.

200. Rights of dissenters

(1) A member of a company is entitled to payment of the fair value of his shares on dissenting from—

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—

(i) a disposition made in accordance with an order of the Court having jurisdiction in the matter; or

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition;

(d) a redemption of his shares by the company under section 197; and

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

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required—

(a) from a member to whom the company did not give notice of the meeting in accordance with this Act; or

(b) the proposed action is authorised by written consent of members without a meeting.

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

(4) Within twenty days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection

was not required, except a member who voted for, or consented in writing to, the proposed action.

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

(a) his name and address;

(b) the number and classes of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 193 shall give to the company a written notice of his decision to elect to dissent within twenty days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 193.

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

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

(8) Within seven days immediately following the date of the expiration of the period within which a member may give his notice of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later—

(a) the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and

(b) if, within thirty days immediately following the date on which an offer under subparagraph *(a)* is made, the company making the offer and the dissenting member agree on the price to be paid for his shares,

the company shall pay to the member the amount in money on the surrender of the certificates representing his shares.

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

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers together shall designate an appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day before the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

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

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

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not

exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company under section 197 and in such case the written offer to be made to the dissenting member under subsection (8) shall be made within seven days immediately following the direction given to a company under section 197 to redeem its shares.

201. Schemes of arrangement

(1) If a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called in the manner the Court directs.

(2) An application under subsection (1) may be made by—

(a) the company;

(b) a creditor of the company;

(c) a member of the company; or

(d) if the company is being wound up, by the liquidator.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding—

(a) on all the creditors or class of creditors, or the members or class of members, as the case may be, and on the company; or

(b) in the case of a company that is being wound up, on the liquidator and on each person who is liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under subsection (3) takes effect when a copy of the order has been filed with the Registrar.

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

(6) In this section, **"arrangement"** includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

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

(8) If the Court makes an order with respect to a company under this section, sections 190 to 200 shall not apply to the company.

(9) A company that fails to comply with subsection (5**)** commits an offence and is liable on summary conviction to a fine of $20,000.

PART 10—CONTINUATION

202. Foreign company may continue under this Act

(1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part if the laws of the jurisdiction in which the foreign company is registered permit the continuation of the company in Montserrat.

(2) A foreign company may not continue as a company incorporated under this Act if—

(a) it is in liquidation or subject to equivalent insolvency proceedings in another jurisdiction;

(b) a receiver or manager is appointed in relation to its assets;

(c) it has entered into an arrangement with its creditors, that has not been concluded; or

(d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

203. Application to continue under this Act

(1) A foreign company shall apply to continue under this Act by filing—

(a) a certified copy of its certificate of incorporation, or other equivalent document that evidences its incorporation, registration or formation;

(b) articles that comply with subsections (2) and (3);

(c) evidence satisfactory to the Registrar that the application to continue and the proposed articles are approved—

(i) by a majority of the directors or the other persons who exercise the powers of the company; or

(ii) in the manner established by the company for exercising the company's powers; and

(d) evidence satisfactory to the Registrar that the company is not disqualified from continuing in Montserrat under section 202(2).

(2) Subject to subsection (3), the articles of a company continuing under this Act shall comply with section 7.

(3) The articles of a company applying to continue under this Act shall, in addition to the matters required to be provided for under section 7, provide for—

(a) the name of the company at the date of the application and the name under which it proposes to be continued;

(b) the jurisdiction under which the foreign company is incorporated, registered or formed; and

(c) the date on which the foreign company was incorporated, registered or formed.

(4) The articles of a foreign company applying to continue under this Act shall be signed by, or on behalf of, the person who approves the articles under subsection (1)*(c)*.

204. Continuation

(1) If the Registrar is satisfied that the requirements of this Act in respect of continuation are complied with, on receipt of the documents specified in section 203(1), the Registrar shall—

(a) register the documents;

(b) allot a unique number to the continued company; and

(c) issue a certificate of continuation to the continued company.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that—

(a) the requirements of this Act as to continuation have been complied with; and

(b) the foreign company is continued as a company incorporated under this Act under the name designated in its articles on the date specified in the certificate of continuation.

(3) The Registrar may refuse to continue a foreign company under this Part if he is of the opinion that it would be contrary to the public interest to do so.

205. Effect of continuation

(1) If a foreign company is continued under this Act—

(a) this Act applies to the continued company as if it had been incorporated under section 6 after the effective date;

(b) the continued company is capable of exercising the powers of a company incorporated under this Act;

(c) the continued company is not to be treated as a company incorporated under the laws of a jurisdiction outside Montserrat; and

(d) the articles filed under section 203(1) become the articles of the company.

(2) The continuation of a foreign company under this Act does not affect—

(a) the continuity of the continued company as a legal entity; or

(b) the assets, rights, obligations or liabilities of the continued company.

(3) Without limiting subsection (2)—

(a) a conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and a cause existing against the foreign company or against a member, director, officer or agent of the foreign company, is not released or impaired by its continuation as a company under this Act; and

(b) civil or criminal proceedings pending by or against a foreign company, or against a member, director, officer or agent of the foreign company, when the Registrar issues a certificate of continuation are not abated or discontinued by its continuation as a company under this Act, but the criminal or civil proceedings may be enforced, prosecuted, settled or compromised by or against the continued company or against a member, director, officer or agent of the company when it was a foreign company.

(4) The shares in the foreign company outstanding immediately before the Registrar issues a certificate of continuation are deemed to have been issued in conformity with this Act.

206. Continuation under foreign law

(1) Subject to its articles, a company for which the Registrar would issue a certificate of good standing under section

376 may, by a resolution of directors or members, continue as a company incorporated under the laws of a jurisdiction outside Montserrat in the manner provided under the laws of that jurisdiction.

(2) A company that continues as a company incorporated under the laws of jurisdiction outside Montserrat ceases to be a company incorporated under this Act only if the laws of the jurisdiction outside Montserrat permit the continuation and the company has complied with the laws of that jurisdiction.

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

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

(a) issue a certificate of discontinuance of the company;

(b) strike the company off the Register of Companies with effect from the date of the certificate of discontinuance; and

(c) publish the striking off of the company by notice in the *Gazette*.

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

(a) the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction are complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.

(6) If a company is continued under the laws of a jurisdiction outside Montserrat—

(a) the company continues to be liable for its claims, debts, liabilities and obligations that existed before its

continuation as a company under the laws of the jurisdiction outside Montserrat;

(b) a conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due and a cause existing against the company or against any member, director, officer or agent of the company is not released or impaired by its continuation as a company under the laws of the jurisdiction outside Montserrat;

(c) civil or criminal proceedings pending by or against the company or against a member, director, officer or agent of the company are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Montserrat, but the criminal or civil proceedings may be enforced, prosecuted, settled or compromised by or against the company or against a member, director, officer or agent of the company as the case may be; and

(d) service of process may continue to be effected on the registered agent of the company in Montserrat in respect of a claim, debt, liability or obligation of the company during its existence as a company under this Act.

PART 11—MEMBERS' REMEDIES

207. Interpretation for this Part

In this Part, "**member**", in relation to a company, means—

(a) a shareholder or a personal representative of a shareholder; or

(b) a guarantee member of a company limited by guarantee.

208. Restraining or compliance order

(1) If a company or a director of a company engages in, proposes to engage in or has engaged in, conduct that contravenes this Act or the articles of the company, the

Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with this Act or the articles.

(2) If the Court makes an order under subsection (1), it may also grant consequential relief as it considers appropriate.

(3) The Court may, before the final determination of an application under subsection (1), make, as an interim order, an order that it could make as a final order under that subsection.

209. Derivative actions

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

(a) bring proceedings in the name and on behalf of that company; or

(b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

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

(a) whether the member is acting in good faith;

(b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;

(c) whether the proceedings are likely to succeed;

(d) the costs of the proceedings in relation to the relief likely to be obtained; and

(e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that—

(a) the company does not intend to bring, diligently continue or defend or discontinue the proceedings; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to—

(i) the directors; or

(ii) to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders—

(a) the applicant must serve at least twenty-eight days' notice of an application for leave under subsection (1) on a company; and

(b) the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant interim relief as it considers appropriate pending the determination of an application for leave under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

210. Costs of derivative action

(1) If the Court grants leave to a member to bring or intervene in proceedings under section 209, it shall, on the application of the member, order that the reasonable costs of bringing or intervening in the proceedings be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear the costs of bringing or intervening in the proceedings.

(2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—

(a) that the company bear the proportion of the costs as it considers to be reasonable; or

(b) that the company shall not bear any of the costs.

211. Powers of Court when leave granted under section 209

The Court may, at any time after granting a member leave under section 209, make an order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes including an order—

(a) authorising the member or another person to control the proceedings;

(b) giving directions for the conduct of the proceedings;

(c) that the company or its directors provide information or assistance in relation to the proceedings; and

(d) directing that an amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to a former and current member of the company instead of to the company.

212. Compromise, settlement or withdrawal of derivative action

Proceedings brought by a member or in which a member intervenes with the leave of the Court under section 209 may be settled, compromised or discontinued only with the approval of the Court.

213. Personal actions by members

A member of a company may bring an action against the company for breach of a duty owed by the company to that member.

214. Representative actions

If a member of a company brings proceedings against the company and another member has the same or substantially the same interest in the proceedings, the Court may—

(a) appoint that member to represent each member who has the same interest; and

(b) make an order it considers appropriate including an order—

(i) as to the control and conduct of the proceedings;

(ii) as to the costs of the proceedings; and

(iii) directing the distribution of an amount ordered to be paid by a defendant in the proceedings among the members represented.

215. Prejudiced members

(1) A member of a company who considers—

(a) that the affairs of the company have been, are being or are likely to be conducted in a manner that is, or

(b) an act of the company has been, is or is likely to be

oppressive, unfairly discriminatory or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, the Court may make an order including an order—

(a) in the case of a shareholder, requiring the company or another person to acquire the shareholder's shares;

(b) requiring the company or another person to pay compensation to the member;

(c) regulating the future conduct of the company's affairs;

(d) amending the company's articles;

(e) appointing a receiver of the company;

(f) appointing a liquidator under Part 14 on the grounds specified in section 261;

(g) directing the rectification of the records of the company; or

(h) setting aside a decision made or action taken by the company or its directors in breach of this Act or the company's articles.

(3) The Court may make an order against a company or another person under this section only if the company or person is a party to the proceedings in which the application is made.

PART 12—FOREIGN COMPANIES

216. Meaning of "carrying on business"

(1) A reference in this Part to a foreign company carrying on business in Montserrat includes a reference to the foreign company establishing or having a place of business in Montserrat.

(2) For the purposes of this Part, a foreign company does not carry on business in Montserrat solely because in Montserrat, it—

(a) is or becomes a party to legal proceedings or settles a legal proceeding, claim or dispute;

(b) holds a meeting of its directors or members or carries on another activity concerning its internal affairs;

(c) maintains a bank account;

(d) effects a sale of property through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Montserrat;

(f) creates evidence of a debt or creates a charge on property;

(g) secures or collects any of its debts or enforces its rights in regard to a security relating to its debts;

(h) conducts an isolated transaction that is completed within a period of thirty-one days not being one of a number of similar transactions that is repeated; or

(i) invests its funds or holds property.

217. Foreign company may carry on business only if registered

(1) A foreign company may carry on business in Montserrat only if the foreign company—

(a) is registered under this Part; or

(b) has applied to be registered and the application has not been determined.

(2) If a foreign company is registered under this Part under an alternate name, it shall carry on business in Montserrat using the alternate name under which it is registered in place of its corporate name.

(3) A foreign company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of $25,000.

218. Application for registration

An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by—

(a) evidence of its incorporation;

(b) a certified copy of the instrument constituting or defining its constitution;

(c) a list of its shareholders or other members as at the date of the application specifying the full name, nationality, or place of incorporation in the case of a body corporate, and address of each shareholder or other member and the date that the person became a shareholder or other member;

(d) a list of its directors as at the date of the application specifying the full name, nationality, address and date of appointment of each director;

(e) a notice specifying the name of the person appointed as the registered agent of the foreign company in Montserrat, endorsed by the registered agent with his agreement to act as registered agent;

(f) if a document specified in paragraph *(a)* or *(b)* is not in English, a translation of the document certified as accurate in accordance with the Regulations; and

(g) any other document prescribed.

219. Registration

(1) Subject to subsection (2), if the Registrar receives an application under section 218, he shall—

(a) register the foreign company in the Register of Foreign Companies; and

(b) issue to the foreign company a certificate of registration as a foreign company.

(2) If the Registrar considers that a foreign company's corporate name is undesirable, the Registrar shall register the company under subsection (1) only if the foreign company applies to be registered under an alternate name that is acceptable to the Registrar.

220. Registration of changes in particulars

(1) A foreign company registered under this Part shall file a notice in the approved form within one month after a change in—

(a) its corporate name;

(b) the jurisdiction of its incorporation;

(c) the instrument constituting or defining its constitution;

(d) a director of the foreign company or the information filed in respect of a director;

(e) its registered agent; or

(f) any other particulars as may be prescribed.

(2) A notice of change of registered agent—

(a) shall be endorsed by the new registered agent with his agreement to act as registered agent; and

(b) takes effect when the Registrar registers the notice of change of registered agent.

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by—

(a) a certified copy of the new or amended instrument; and

(b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) If the Registrar receives a notice of change under subsection (3) that complies with this section, he shall register the change in the Register of Foreign Companies.

(5) A foreign company that contravenes this section commits an offence and is liable on summary conviction to a fine of $10,000.

221. Foreign company to have registered agent

(1) A foreign company that carries on business in Montserrat shall have a registered agent in Montserrat.

(2) A person may act as a foreign company's registered agent only if that person is a licensed company manager.

(3) A foreign company that contravenes subsection (1) and a person who contravenes subsection (2) commit an offence and is liable on summary conviction to a fine of $20,000.

222. Resignation of registered agent

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

(2) A person who wishes to resign as the registered agent of a foreign company shall—

(a) give a person specified in subsection (3), at least thirty days written notice of his intention to resign as registered agent of the foreign company on the date specified in the notice;

(b) give the foreign company a list of each approved registered agent in Montserrat including each registered agent's name and address; and

(c) file a copy of the notice and the list of registered agents under paragraph *(b)*.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to—

(a) the principal place of business of the foreign company in Montserrat, if any; and

(b) a director of the foreign company—

(i) at the director's last known address; or

(ii) if the registered agent does not know of a director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) If a foreign company does not appoint a new registered agent and file a notice of change of registered agent under section 220 on or before the date specified in a notice under subsection (2), the registered agent may file a notice of resignation as the foreign company's registered agent.

(5) Unless the foreign company has previously changed its registered agent, the resignation of a registered agent is effective the day after the Registrar registers the notice of resignation.

223. Registered agent ceases to be eligible to act

(1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to be a licensed company manager.

(2) If a person ceases to be eligible to act as a registered agent, that person shall, with respect to each foreign company of which he was, immediately before ceasing to be eligible to act, the registered agent, send to the person specified in subsection (3)—

(a) a notice—

(i) advising the foreign company that he is no longer eligible to be its registered agent;

(ii) advising the foreign company that it must appoint a new registered agent within sixty days of the date of the notice; and

(iii) specifying that on the expiration of the period specified in subparagraph (ii), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent; and

(b) a list of persons who are authorised by the Commission to provide registered agent services.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to—

(a) the principal place of business of the foreign company in Montserrat, if any; and

(b) a director of the foreign company at the director's last known address or, if the registered agent does not know of a director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) A foreign company which is sent a notice under subsection (2) shall, within sixty days of the date of the notice—

(i) appoint a new registered agent; and

(ii) file a notice of change of registered agent under section 220.

(5) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which the person which sends a notice under subsection (2), on the earlier of—

(a) the date that the foreign company changes its registered agent in accordance with subsection (4); or

(b) the first day after the expiry of the notice period under subsection (4).

(6) A registered agent who fails to comply with subsection (2) and a foreign company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of $10,000.

(7) A person does not commit an offence under subsection (6) if he—

(a) ceases to be eligible to act as a registered agent; and

(b) continues to be the registered agent of a company during the period from the date he ceases to be eligible to act to the date that the company appoints a new registered agent.

224. Control over names of foreign companies

(1) If the Registrar is satisfied that the corporate, alternate or other name being used by a foreign company carrying on business in Montserrat is undesirable, he may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in Montserrat using that name.

(2) A foreign company on which a notice is served under subsection (1) shall cease to carry on business in Montserrat using the name specified in the notice from—

(a) a date thirty days after the date of the service of the notice; or

(b) a later date specified in the notice.

(3) The Registrar may withdraw a notice served under subsection (1).

(4) If a notice under subsection (1)—

(a) relates to the corporate name of a foreign company or

(b) if registered under an alternate name, relates to its alternate name,

the company shall, within thirty days after the date of service of the notice, apply to the Registrar to be registered under an alternate name that is acceptable to the Registrar.

(5) If the Registrar determines that the alternate name under which a foreign company is applying to be registered under subsection (4) is acceptable to him, the Registrar shall register the foreign company under the alternate name.

(6) A foreign company that contravenes subsection (2) or subsection (4) commits an offence and is liable on summary conviction to a fine of $15,000.

225. Use of name by foreign company

(1) Subject to subsections (2), (3) and (4), a foreign company that carries on business in Montserrat shall ensure that its full corporate name, or if it is registered under this Part under an alternate name, that alternate name and the name of the jurisdiction of its incorporation are clearly stated in—

(a) each communication sent by the foreign company or on its behalf; and

(b) each document issued or signed by the foreign company, or on its behalf,

that is evidence of or creates a legal obligation of the foreign company.

(2) For the purposes of subsection (1), a recognised abbreviation of a word may be used in the name of a foreign company if it is not misleading to do so.

(3) If a foreign company is registered under this Part under an alternate name, the foreign company shall state in each communication and document specified in subsection (1)*(a)* and *(b)* that the alternate name under which it is registered is not the corporate name under which it is registered in the jurisdiction of its incorporation.

(4) The Regulations may provide for circumstances in which a company may or shall set out its full corporate name in a communication or document specified in subsection (1)*(a)* or *(b)* in addition to or in place of the alternate name under which it is registered.

(5) A foreign company that contravenes subsections (1) or (3) commits an offence and is liable on summary conviction to a fine of $15,000.

226. Foreign company ceasing to carry on business in Montserrat

(1) A foreign company shall, within seven days of ceasing to carry on business in Montserrat, file a notice in the approved form.

(2) On receipt of a notice under subsection (1), the Registrar shall remove the foreign company from the Register of Foreign Companies and from the time the foreign company is deleted from the Register of Foreign Companies, the person appointed as the registered agent of the foreign company ceases to be that foreign company's registered agent.

227. Removal of foreign company from Register

(1) The Registrar may remove a foreign company from the Register of Foreign Companies if—

(a) he has reasonable cause to believe that—

(i) the foreign company is not carrying on business in Montserrat;

(ii) the foreign company is carrying on business for which a licence, permit or authority is required under the laws of Montserrat without a licence, permit or authority; or

(iii) the foreign company no longer has status as a legal entity in the jurisdiction in which it is or was incorporated, registered or formed;

(b) the foreign company does not have a registered agent;

(c) the foreign company fails to—

(i) file any return, notice or document required to be filed under this Act; or

(ii) pay a fee or penalty payable under this Act by the due date; or

(d) he is of the opinion that the removal of the foreign company from the Register of Foreign Companies is in the public interest.

(2) Before the Registrar removes a foreign company from the Register of Foreign Companies on the grounds specified in subsection (1), he shall—

(a) send the company a notice stating that—

(i) he intends to remove the foreign company from the Register of Foreign Companies and specifying the ground under which he is doing so; and

(ii) unless the foreign company shows why the Registrar should not remove it from the Register of Foreign Companies, the foreign company will be removed from the Register of Foreign Companies on a date, at least thirty days after the date of the notice, specified in the notice, at least thirty days after the date of the notice; and

(b) publish a notice of his intention to remove the foreign company from the Register of Foreign Companies in the *Gazette.*

(3) After the expiration of the time specified in the notice, unless the foreign company has shown cause to the contrary the Registrar may remove the foreign company from the Register of Foreign Companies.

(4) The Registrar shall publish a notice of the removal of a foreign company from the Register of Foreign Companies in the *Gazette*.

(5) A foreign company is removed from the Register of Foreign Companies and the foreign company ceases to be registered under this Part on the date specified in the notice sent to the company under subsection (2)*(a)*.

(6) The removal of a foreign company from the Register of Foreign Companies is not affected by the Registrar's failure to—

(*a*) serve a notice on the foreign company's registered agent; or

(*b*) publish a notice in the *Gazette* under subsection (2)*(b).*

228. Subsequent registration of foreign company

(1) This section applies if—

(a) a foreign company is removed from the Register of Foreign Companies under section 226 or 227; and

(b) the foreign company subsequently applies under section 218 to be registered under this Part.

(2) The Registrar shall register a foreign company to which subsection (1) applies only if the foreign company pays the fees and penalties that were due to the Registrar at the date that the foreign company was removed from the Register of Foreign Companies.

(3) If a foreign company to which subsection (1) applies has, during the period between its removal from the Register of Foreign Companies and its subsequent application to be registered under section 218, carried on business in Montserrat, it is entitled to be registered under section 219 only if it pays—

(a) the fees that would have been payable had it been registered during that period; and

(b) the penalties that would have been payable for the non–payment of those fees.

(4) The registration of a foreign company to which subsection (1) applies takes effect from the date of its registration, not the date of its removal from the Register of Foreign Companies.

229. Service of documents on a foreign company registered under this Part

(1) Subject to subsection (2), a document may be served on a foreign company registered under this Part by leaving the document at or sending it by post to, the address of the registered agent of the foreign company.

(2) Subsection (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

230. Financial statements and returns

A foreign company registered under this Part shall file such financial statements and financial and other returns as may be prescribed.

231. Validity of transactions not affected

A failure by a foreign company to comply with this Part does not affect the validity or enforceability of a transaction entered into by the foreign company.

PART 13—STRIKE-OFF AND DISSOLUTION

232. Interpretation for this Part

In this Part—

"liquidator" means a liquidator appointed under Part 14;

"Register" means the Register of Companies.

233. Striking company off Register

(1) The Registrar may strike the name of a company off the Register if—

(a) the company—

(i) does not have a registered agent;

(ii) fails to file a return, notice or document required to be filed, or provide information required under this Act;

(iii) fails to pay its annual fee or any other prescribed fee by the due date;

(iv) fails to a penalty due under this Act or the Regulations; or

(v) fails to provide PSC information or PSC verification evidence to the Registrar, as required by this Act; or

(b) the Registrar is satisfied that—

(i) the registered agent of the company is a person who is not eligible to act as the company's registered agent in accordance with section 79;

(ii) the company has ceased to carry on business; or

(iii) the company is carrying on business for which a licence, permit or authority is required under the laws of Montserrat without having a licence, permit or authority.

(2) If the Registrar determines that the company is trading, has property or that there is another reason why the company should not be struck off the Register, he may, instead of striking the company from the Register, refer the company to the Commission for investigation.

(3) Before striking a company off the Register on the grounds specified in subsection (1)*(a) or (b)*, the Registrar shall—

(a) send the company a notice stating that, unless the company shows cause to the contrary, it shall be struck off the Register on a date specified in the notice, which shall be no less than thirty days after the date of the notice; and

(b) publish a notice of his intention to strike the company off the Register in the *Gazette.*

(4) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(5) The Registrar shall publish a notice of the striking of a company from the Register in the *Gazette*.

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

(7) The striking off of a company shall not be affected by the Registrar's failure to—

(a) serve a notice on the registered agent; or

(b) publish a notice in the *Gazette* under subsection (3).

234. Appeal

(1) A person who is aggrieved by the striking off of a company under section 233 may, within ninety days of the date of the notice published in the *Gazette*, appeal to the Court.

(2) Notice of an appeal to the Court under subsection (1) shall be served by the aggrieved person on the Registrar, who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1), suspend the operation of the striking off on the terms he considers appropriate, pending the determination of the appeal.

235. Effect of striking off

(1) If a company is struck off the Register, the company and the directors, members and a liquidator or receiver of the company shall not—

(a) commence legal proceedings, carry on business or in any way deal with the assets of the company;

(b) defend legal proceedings, make a claim or claim a right for or in the name of the company; or

(c) act with respect to the affairs of the company.

(2) Despite subsection (1), if a company is struck off the Register, the company, or a director, member, liquidator or receiver of the company may—

(a) apply to the Registrar for the restoration of the company to the Register;

(b) continue to defend proceedings that were commenced against the company before the date the company was struck off the Register; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company before the company was struck off the Register.

(3) The striking of a company from the Register does not—

(a) prevent—

(i) the company from incurring liabilities; or

(ii) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; and

(b) affect the liability of any of its members, directors, officers or agents.

236. Dissolution of company struck off the Register

If a company that is struck off the Register under section 233 remains struck off for seven years, it is dissolved with effect from the last day of that seven-year period.

237. Restoration of company to Register by Registrar

(1) If a company that is struck off the Register is not dissolved, the Registrar may—

(*a*) on receipt of an application in the approved form; and

(b) on payment of the restoration fee and any outstanding fees and penalties,

restore the company to the Register and issue a certificate of restoration to the Register.

(2) If a company is struck off the Register under section 233(1)*(a)*(i) or the struck off company does not have a registered agent, the Registrar may restore the company to the Register only if he is satisfied that—

(a) a licensed person has agreed to act as registered agent of the company; and

(b) it is fair and reasonable for the name of the company to be restored to the Register.

(3) An application to restore a company to the Register under subsection (1) may be made by—

(a) the company; or

(b) a creditor, member or liquidator of the company.

(4) A company, or a creditor, member or liquidator of a company may, appeal to the Court from a refusal of the Registrar to restore the company to the Register within ninety days of the Registrar's refusal to restore the company to the Register.

(5) If the Court is satisfied that it would be just for the company to be restored to the register, the Court may direct the Registrar to restore the company to the Register on the terms and conditions it considers appropriate.

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

(7) A company that is restored to the Register under this section is deemed never to have been struck off the Register.

(8) If a company to which subsection (2) applies is restored to the register, the company shall immediately appoint a registered agent in accordance with section 81.

238. Application to restore dissolved company to the Register

(1) An application may be made to the Court to restore a dissolved company to the Register by—

(a) a creditor, former director, former member or former liquidator of the company; or

(b) a person who can establish an interest in having the company restored to the Register.

(2) An application under subsection (1**)** may not be made more than ten years after the date that the company was dissolved.

(3) A person who makes an application under subsection (1) must serve a notice of the application on—

(a) the Registrar;

(b) the Financial Secretary; and

(c) if the company was a financial institution before its dissolution, the Commission;

and each party is entitled to appear and be heard on the hearing of the application.

239. Court's powers on hearing

(1) Subject to subsection (2), on an application under section 238, the Court may—

(a) restore the company to the Register subject to any condition it considers appropriate; and

(b) give a direction or make an order it considers necessary or desirable to place the company and any other person as nearly as possible to the position that the company or other person would have been in if the company had not been dissolved or struck off the Register.

(2) If the company was dissolved following the completion or termination of its liquidation under Part 14, the Court shall restore the company to the Register only if—

(a) the applicant nominates a person to be liquidator of the company if it is restored to the Register;

(b) the person nominated as liquidator may be appointed liquidator under Part 14 and consents to act as liquidator of the company on its restoration; and

(c) provision satisfactory to the Court has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) If the Court makes an order to restore a company to the Register under subsection (2), it shall appoint as liquidator of the company—

(a) the person the applicant nominates; or

(b) a person who is able to act as liquidator of the company.

240. Effect of restoration

(1) If the Court makes an order restoring a company to the Register, a sealed copy of the Order shall be filed with the Registrar—

(a) in the case of a company to which section 238(2) applies, by the person appointed to be liquidator of the company under section 239(3); and

(b) in any other case, by the applicant for the Order.

(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register with effect from the date that the copy of the sealed order was filed.

(3) If the company was dissolved following the completion or termination of its liquidation under Part 14 —

(a) the company is restored as a company in liquidation under Part 14; and

(b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the date that the company is restored to the Register.

(4) Subject to subsection (5), a company is restored to the Register with the name that it had immediately before it was dissolved.

(5) If the name of a company has been reused in accordance with Regulations made under section 19, the company is restored to the Register with a name constituting its company number followed by the word **"Limited"**.

(6) A company that is restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

241. Appointment of Official Receiver as liquidator of company struck off

(1) If a company is struck off the Register, the Registrar may apply to the Court for the appointment of the Official Receiver or some other person as liquidator of the company.

(2) If the Court makes an order under subsection (1)—

(a) the company is restored to the Register; and

(b) the liquidator is deemed to have been appointed by the Court under section 272.

242. Property of dissolved company

(1) Subject to subsection (2), the property of a company that has not been disposed of at the date the company is dissolved vests in the Crown.

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

(3) A company restored to the Register is entitled to be paid out of the Consolidated Fund—

(a) any money received by the Crown under subsection (1) in respect of the company; and

(b) if property, other than money, vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—

(i) the value of the property at the date it vested in the Crown; and

(ii) the amount realised by the Crown by the disposition of that property.

243. Disclaimer

(1) In this section, **"onerous property"** means—

(a) an unprofitable contract; or

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

(2) Subject to subsection (3), the Financial Secretary may, by notice published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 242.

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

(4) Unless the Court, on the application of the Financial Secretary, orders otherwise, the Financial Secretary may disclaim property only if the property is disclaimed—

(a) within twelve months of the date upon which the vesting of the property under section 242 came to the notice of the Financial Secretary; or

(b) if any person interested in the property gives notice in writing to the Financial Secretary requiring him to decide whether to disclaim the property, within three months of the date that he received the notice,

whichever is first.

(5) Property disclaimed by the Financial Secretary under this section is deemed not to have vested in the Crown under section 242.

(6) A disclaimer under this section—

(a) operates so as to determine, with effect from immediately before the dissolution of the company,

the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

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

(a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of an order of the Court under subsection (8); and

(b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

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

PART 14—LIQUIDATION

Division 1 - Preliminary

244. Interpretation for this Part

(1) In this Part—

"creditor", in relation to a company, means a person who has a claim against the company, whether assignment or otherwise, that is or would be a provable debt in the liquidation of the company;

"insolvent" has the meaning specified in section 245;

"liquidator" means a person appointed as liquidator under this Part;

"liability" has the meaning specified in section 246;

"preferential debt" means a debt of a type prescribed by the Regulations as preferential;

"preferential creditor" has the meaning specified in section 2(4);

"prescribed priority" means the priority for the payment of the costs and expenses of a liquidation prescribed by the Regulations;

"provable debt" has the meaning specified in section 247;

"relevant period" means the period of two years before—

(a) in the case of a company in liquidation, the date of the appointment of the liquidator;

(b) if a provisional liquidator has been appointed, the date of appointment;

"relevant person" means a person who is, or within the relevant period has been—

(a) a director or other officer of the company;

(b) employed by the company under a contract of services or a contract for services and who, in the opinion of the liquidator or the Official Receiver, is capable of providing the information required;

(c) a director or other officer of a company which is a director of the company;

(d) employed under a contract of services or a contract for services employee by a company which is a director of the company; or

(e) a person who, within the relevant period, has promoted the formation of the company;

"relevant time" in relation to a company, means the commencement of the liquidation of the company;

"secured creditor" in relation to a company, means a creditor of the company who holds a security interest over an asset of the company in respect of a liability of the company to the creditor;

"statutory demand" means a demand made under section 254; and

"unsecured creditor", in relation to a company, means a creditor of the company who is not a secured creditor.

245. Meaning of "insolvent"

A company—

(a) is presumed to be insolvent if—

(i) it fails to comply with the requirements of a statutory demand that has not been set aside under section 256; or

(ii) execution or other process issued on a judgment, decree or order of a Montserrat court in favour of a creditor of the company is returned wholly or partly unsatisfied; and

(b) is insolvent if—

(i) it is unable to pay its debts as they fall due; or

(ii) the value of its liabilities exceeds its assets.

246. Meaning of "liability"

(1) Subject to subsection (3), **"liability"** means a liability to pay money or money's worth, including a liability under an enactment, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution.

(2) A liability may be present or prospective, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Part, an illegal or unenforceable liability is deemed not to be a liability.

247. Meaning of "provable debt"

(1) Subject to section 248, the following liabilities are provable debts in the liquidation of a company—

(a) any liability to which the company is subject at the relevant time;

(b) any liability to which the company may become subject after the relevant time by reason of any obligation incurred before that time; and

(c) any interest that may be claimed in accordance with this Act or the Regulations.

(2) A liability in tort is a provable debt in the liquidation of a company if—

(a) the cause of action has accrued at the relevant time; or

(b) all the elements necessary to establish the cause of action exist at the relevant time, except for actionable damage.

248. Liabilities that are not provable debts or postponed debts

(1) The following liabilities are not provable debts—

(a) an obligation arising under a confiscation order made under section 7(3) of the Proceeds of Crime Act;

(b) a liability that, under this Act or any other enactment or a rule of law, is of a type that is not provable, whether on grounds of public policy or otherwise; and

(c) such other liabilities as may be prescribed.

(2) The following liabilities are postponed debts—

(a) any fine imposed for an offence;

(b) a liability that, under this Act, any other enactment or a rule of law is of a type that is required to be postponed; and

(c) such other liabilities as may be prescribed as postponed debts.

(3) A liability which is a postponed debt is not a provable debt until all other provable debts have been paid in full.

249. Insolvency set-off

(1) This section applies if, before the commencement of the liquidation, there have been mutual credits, mutual debts or other mutual dealings between a company in liquidation and a creditor claiming or intending to claim for a debt in the liquidation.

(2) Subject to section 250 and subsections (3) to (6)—

(a) if this section applies, an account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sum due from one party shall be set-off against the sums due from the other party; and

(b) only the balance, if any, of the account owed—

(i) to the creditor may be claimed in the liquidation; or

(ii) to the company shall be paid to the liquidator as part of the assets of the company.

(3) If all or part of the balance referred to in subsection (2)*(b)*(ii) as owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, is payable if and when the debt becomes due and payable.

(4) A sum shall be regarded as being due to or from the company for the purposes of subsection (2) if it constitutes a liability within the meaning of section 246.

(5) Sections 252 and 253 apply, as appropriate, for the purposes of this section to—

(a) any obligation to or from the debtor which, because it is a contingency or for any other reason, it does not bear a certain value; or

(b) any sums due to the debtor which—

(i) are of a periodical nature;

(ii) bear interest; or

(iii) are payable in a currency other than dollars.

(6) The provisions of the Regulations concerning debts payable at a future time apply for the purposes of this section to any sum due to or from the debtor which is payable in the future.

(7) The Regulations may provide for the treatment of netting agreements in the liquidation of a company.

250. Exclusions from section 249

(1) Section 249 does not apply to—

(a) any debt arising out of an obligation incurred at a time when, in the case of a company, the creditor had notice that—

(i) an application to the Court for the appointment of a liquidator was pending; or

(ii) a meeting of the members had been called to consider the appointment of a liquidator under section 249; or

(b) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party if that agreement was entered into—

(i) after the commencement of the liquidation;

(ii) at a time when the creditor had notice of a matter specified in subsection (1)*(a)*(i) or (ii);

(2) If, before the relevant time, a creditor waives or agrees not to claim the benefit of a set-off under section 249, that waiver or agreement takes effect despite that section, except to the extent that a creditor who was not a party to the agreement, or has not agreed otherwise, is prejudiced.

251. Validity of agreements to subordinate debt

If, before the relevant time, a creditor acknowledges or agrees that, in the event of a shortfall of assets, the creditor will accept a lower priority in respect of a debt than that

which the creditor would otherwise have under this Act, that acknowledgement or agreement takes effect despite the provisions of this Act, except to the extent that a creditor of the company in liquidation who was not a party to the agreement is prejudiced.

252. Quantification of claims

(1) The amount of a claim shall be quantified as at the relevant time.

(2) If a claim is subject to a contingency or, for any other reason, the amount of the claim is not certain, the liquidator shall—

(a) agree an estimate of the value of the claim as at the relevant time; or

(b) apply to the Court to determine the amount of the claim.

(4) On an application by the liquidator under subsection (2)*(b)*, the Court may—

(a) determine the amount of the claim itself; or

(b) determine a method to be used by the liquidator for calculating the amount of the claim.

(5) In the case of rent and other payments of a periodic nature, a claim may include any amounts due and unpaid at the relevant time and if, at the relevant time, a payment was accruing due, the claim may include so much as would have fallen due at that time if the liability had been accruing from day to day.

(6) A claim based on a liability that, at the relevant time, was not payable by the company until after the relevant time shall be discounted in accordance with the Regulations.

(7) Interest may be included in a claim as provided by section 253.

253. Interest on claims

(1) Subject to section 316, a claim in the liquidation of a company shall not include an amount for interest in respect of a period after the commencement of the liquidation.

(2) If it was agreed between the company and a creditor that the debt on which the creditor's claim is based would bear interest, the claim may include interest, at the agreed rate, up to the commencement of the liquidation.

(3) A claim made by a creditor other than one referred to in subsection (2) may include interest up to the commencement of the liquidation if—

(a) the debt on which the claim is based is due by virtue of a written instrument and was payable at a certain time before the relevant time; or

(b) if, before the commencement of the liquidation, the creditor made written demand on the company and the demand stipulated that interest would be payable on the debt from the date of the demand until payment of the debt.

(4) The amount of interest that may be included in a claim under this section is—

(a) in the case of a debt referred to in subsection (3)*(a)*, interest at the judgment rate for the period from the date that the debt was payable to the relevant time; and

(b) in the case of a debt referred to in subsection (3)*(b)*, interest at the judgment rate for the period from the date of the written demand to the relevant time.

Division 2 – Statutory Demand

254. Service of statutory demand

(1) A creditor may serve a demand on a company for payment of a debt owed by that company to him.

(2) A statutory demand shall—

(a) be in respect of a debt that is due at the time of the demand, the amount of which is not less than the prescribed minimum;

(b) be in writing and shall specify the nature of the debt and its amount;

(c) be dated and shall be signed by the creditor or by a person authorised to make demand on the creditor's behalf;

(d) require the company to pay the debt or to secure or compound for the debt to the reasonable satisfaction of the creditor within twenty-one days of the date of service of the demand on it;

(e) state that if the demand is not complied with, application may be made to the Court for the appointment of a liquidator;

(f) set out the rights of the company to make application to set the demand aside under section 255; and

(g) comply with, and be served in accordance with, the Regulations.

(3) If the creditor making demand under subsection (1) is a secured creditor in respect of the debt, the full amount of the debt shall be specified in the demand, but—

(a) the demand shall specify the nature of the security interest, and the value which the creditor places on it at the date of the demand; and

(b) the amount claimed—

(i) shall be the full amount of the debt less the amount specified as the value of the security interest; and

(ii) must equal or exceed the prescribed minimum.

255. Application to set aside statutory demand

(1) If a company has been served with a statutory demand it may apply to the Court for an order setting it aside.

(2) An application under subsection (1) shall be made within twenty-one days of the date of service of the demand on the company.

(3) The Court shall not extend the time for making an application to set aside a statutory demand.

(4) A company applying to set aside a statutory demand under this section shall give seven days' notice of the hearing to the creditor or, if a person is named in the demand as the person with whom communications in respect of the demand should be made, to that person.

(5) If a company makes an application under this section, the time for compliance with the requirements of the statutory demand is extended until—

(a) the date on which the application is determined; or

(b) such later date as the Court may fix under section 256(5).

256. Hearing to set aside statutory demand

(1) The Court shall set aside a statutory demand if it is satisfied that—

(a) there is a substantial dispute as to whether—

(i) the debt, or

(ii) a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum,

is owing or due;

(b) the company on whom the statutory demand was served has a reasonable prospect of establishing a set-off, counterclaim or cross claim in an amount equal to or greater than the amount specified in the demand less the prescribed minimum; or

(c) the creditor holds a security interest in respect of the debt claimed and the value of the security interest is equal to or greater than the amount specified in the demand less the prescribed minimum.

(2) If the Court is satisfied that the amount of the creditor's debt is less than the amount specified in the statutory demand, but it equals or exceeds the prescribed minimum, it may make an order—

(a) varying the demand to show the amended debt; and

(b) declaring the demand to have had effect, as varied, as from the date of service of the demand.

(3) If the Court is satisfied that the security interest of a secured creditor has been under-valued in the statutory demand, the Court may require the creditor to amend the demand accordingly, but without prejudice to his right to make application for the appointment of a liquidator.

(4) The Court may set aside a statutory demand if it is satisfied that substantial injustice would otherwise be caused—

(a) because of a defect in the demand, including a failure to comply with section 254(3); or

(b) for some other reason.

(5) If, on hearing an application to set aside a statutory demand, the Court is satisfied that there are no grounds for setting aside the statutory demand, the Court shall dismiss the application but may extend the time for compliance with the statutory demand.

(6) Having considered the evidence before it on a hearing under this section, the Court may either summarily determine the application or adjourn it giving such directions as it considers appropriate.

Division 3 – Appointment of Liquidator and Liquidation of Company

257. Commencement and duration of liquidation

(1) A company is put into liquidation by the appointment of a liquidator.

(2) A liquidator may be appointed in respect of a company only by—

(a) the members of the company under section 258; or

(b) the Court under section 272.

(3) The liquidation of a company commences at the time at which the liquidator is appointed and continues until it terminates in accordance with section 335.

258. Members' resolution

(1) Subject to section 259, the members of a company may, by special resolution, appoint an eligible insolvency practitioner as liquidator of the company.

(2) The Official Receiver may be appointed as liquidator of a company if a special resolution has been passed by reason of the Official Receiver exercising votes attached to shares in the company of—

(a) another company or an unregistered company of which the Official Receiver is liquidator; or

(b) a bankrupt of which the Official Receiver is bankruptcy trustee.

259. Restrictions on appointment of liquidator by members

(1) The members of a company may not appoint a liquidator of the company if—

(a) an application to the Court to appoint a liquidator has been filed and served but not yet determined;

(b) a liquidator has been appointed by the Court; or

(c) the person to be appointed liquidator has not consented in writing to his appointment.

(2) The members of a company that is a financial institution may not appoint a liquidator of the company unless at least five business days' written notice of the resolution, or such shorter period as the Commission may accept in writing, has been given to the Commission.

(3) Subject to section 258(2), the members of a company may not appoint the Official Receiver as liquidator of the company.

(4) Any resolution of the members that purports to appoint a liquidator contrary to this section is void and of no effect.

(5) The acts of a liquidator appointed in breach of subsection (1)*(a)* are valid provided that he is not aware of the breach and the acts are carried out in good faith.

260. Notice to liquidator

(1) If the members appoint a liquidator under section 258, the company shall, as soon as practicable, give the liquidator notice of his appointment.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Appointment of liquidator by the Court

261. Grounds for appointment of liquidator of company

(1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of a company if—

(a) the company is insolvent;

(b) the number of members is reduced below the minimum number required under the Companies Act;

(c) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(d) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(d)*—

(a) the **"public"** includes the public within and outside Montserrat; and

(b) the preservation of the reputation of Montserrat is a matter of public interest.

(3) The Court may not appoint a liquidator of a company that is in liquidation, whether by virtue of the appointment of a liquidator—

(a) by the Court; or

(b) by a valid resolution of the members under section 258.

262. Applicants for order appointing liquidator of company

(1) Subject to this section, any one or more of the following may apply to the Court for the appointment of a liquidator of a company—

(a) the company;

(b) a creditor;

(c) a member;

(d) the directors;

(e) a director;

(f) the Attorney General under section 264; or

(g) the Commission under section 265;

(2) An applicant may, in an application under this section, propose an eligible insolvency practitioner as liquidator of the company.

263. Restrictions on applications

(1) An application for the appointment of a liquidator may be made by a director only on the ground that the company is insolvent.

(2) The leave of the Court is required for an application by—

(a) a director, or

(b) if the ground for the application is the company's insolvency, a member,

and the Court shall not grant leave unless the Court is satisfied that there is a *prima facie* case that the company is insolvent.

(3) An application to appoint a liquidator on the public interest ground may only be made by the Attorney General under section 264 or the Commission under section 265.

264. Application by the Attorney General

The Attorney General may apply to the Court for the appointment of a liquidator of a company on the public interest ground.

265. Application by Commission

The Commission may make application to appoint a liquidator of a company only—

(a) if the company—

(i) is or at any time has been a financial institution; or

(ii) is carrying on, or at any time has carried on, unauthorised financial services business; and

(b) on the grounds that the company is insolvent or that it is in the public interest for a liquidator to be appointed.

266. Withdrawal of application

An application for the appointment of a liquidator may not be withdrawn except with the leave of the Court.

267. Advertisement of application

(1) Unless the Court otherwise orders, an application for the appointment of a liquidator shall be advertised in accordance with the Regulations—

(a) if the company is the applicant, not less than seven days before the date set for the application to be heard; or

(b) if the company is not the applicant, not less than seven days after service of the application on the company and not less than seven days before the date set for the application to be heard.

(2) If the application is not advertised in accordance with this section and the Regulations, the Court may dismiss it.

268. Substitution of applicant

The Court may, by order, substitute as applicant in an application for the appointment of a liquidator, a creditor or member who is entitled to make such an application if—

(a) the applicant applies to withdraw the application or consents to it being dismissed;

(b) the Court considers that the application is not being diligently proceeded with;

(c) the applicant is not entitled to make the application; or

(d) the Court for any other reason considers it appropriate to do so.

269. Period within which application shall be determined

(1) Subject to subsection (2), an application for the appointment of a liquidator shall be determined within six months after it is filed.

(2) The Court may, upon such conditions as it considers appropriate, extend the period referred to in subsection (1) for one or more periods not exceeding three months each if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

(4) Section 381(1) does not apply to the time periods specified in this section.

270. Restrictions on company's opposition to application

(1) In so far as an application for the appointment of a liquidator on the grounds that it is insolvent relies on a

failure by the company to comply with a statutory demand, the company may not, without the leave of the Court, oppose the application on a ground—

(a) that the company relied on for the purposes of an application by it for the demand to be set aside; or

(b) that the company could have so relied on, but did not so rely on (whether it made such an application or not).

(2) The Court shall not grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the company is solvent.

271. Power to stay or restrain proceedings

If an application for the appointment of a liquidator or provisional liquidator of a company has been made but not yet determined or withdrawn, the applicant or any person who is entitled to apply for the appointment of a liquidator of the company under section 261 or under any other enactment may if any action or proceeding is pending against the company in court or tribunal, apply to the court, for a stay of the action or proceeding.

272. Court's powers on hearing application

(1) On the hearing of an application for the appointment of a liquidator, the Court may—

(a) appoint a liquidator of the company on one or more of the grounds specified in section 261;

(b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers appropriate.

(2) The Court shall not refuse to appoint a liquidator of a company merely because—

(a) the assets of the company are subject to a security interest in respect of an amount equal to or greater than the value or amount of the assets;

(b) the company has no assets; or

(c) if the applicant is a member and, if the order were made, no assets of the company would be available for distribution among the members.

(3) Subject to subsection (4), if an application to appoint a liquidator is made by a member on the just and equitable ground, the Court shall appoint a liquidator if it is of the opinion that—

(a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and

(b) in the absence of any other remedy it would be just and equitable to appoint a liquidator.

(4) Subsection (3) does not apply if the Court is of the opinion that—

(a) some other remedy is available to the applicant; and

(b) the applicant is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy.

Provisional Liquidator

273. Application for appointment of provisional liquidator

(1) If an application to the Court for the appointment of a liquidator of a company has been made but not determined or withdrawn, application may be made to the Court for the appointment of a provisional liquidator by—

(a) the applicant for the appointment of a liquidator; or

(b) any person who is entitled to apply for the appointment of a liquidator of the company under section 261 or under any other enactment.

(2) An application under subsection (1) by a member or a director may only be made with the leave of the Court.

(3) On an application under subsection (1), the Court may appoint the Official Receiver or an eligible insolvency practitioner as provisional liquidator of the company if—

(a) the company, in respect of which the application to appoint a liquidator has been made, consents; or

(b) the Court is satisfied that the appointment of a provisional liquidator is—

(i) necessary for the purpose of maintaining the value of assets owned or managed by the company;

(ii) otherwise in the interests of creditors, or any class of creditors; or

(iii) in the public interest.

(4) The Court may appoint a provisional liquidator on such terms as it considers appropriate and may, as a condition precedent to the appointment, require the applicant to deposit at Court, or otherwise secure to the satisfaction of the Court, such sum as the Court considers reasonable to cover the remuneration and expenses of the provisional liquidator.

274. Rights and powers of provisional liquidator

(1) Subject to subsection (2), a provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which he was appointed.

(2) The Court may—

(a) limit the powers of a provisional liquidator in such manner and at such times as it considers appropriate; or

(b) give such directions to the provisional liquidator as it considers appropriate.

275. Remuneration of provisional liquidator

(1) The provisional liquidator of a company is entitled to be paid such remuneration as the Court may order applying the general principles specified in the Regulations and to be reimbursed for the expenses that he has properly incurred.

(2) Subject to subsections (4) and (5), the remuneration and expenses of the provisional liquidator is payable—

(a) if a liquidator is not appointed, out of the assets of the company; or

(b) if a liquidator is appointed, as an expense of the liquidation in accordance with the prescribed priority.

(3) The Court may order the applicant for the appointment of the provisional liquidator to pay or contribute to the remuneration and expenses of the provisional liquidator if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in applying for the appointment of the provisional liquidator.

(4) If the assets of the company are not sufficient to pay the remuneration and expenses of the provisional liquidator, the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the appointment of the provisional liquidator.

(5) Unless the Court otherwise orders, if a liquidator of the company is not appointed, the provisional liquidator may retain out of the company's assets such sums or assets as are, or may be, required for meeting his remuneration and expenses.

276. Termination of appointment of provisional liquidator

(1) The Court may, on the application of the provisional liquidator or of any person specified in section 263(1) or on its own motion, terminate the appointment of a provisional liquidator.

(2) If the Court has not previously terminated the appointment of a provisional liquidator under subsection (1), it terminates on—

(a) the determination by the Court of the application to appoint a liquidator; or

(b) the Court granting the applicant leave to withdraw the application under section 266.

(3) On the termination of the appointment of a provisional liquidator, the Court may give such directions or make such order with respect to the accounts of his administration, or to any other matters, as it considers appropriate.

Consequences of Appointment of Liquidator

277. Effect of liquidation

(1) Subject to subsection (2), with effect from the commencement of the liquidation of a company—

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part or authorised by the liquidator;

(c) unless the Court otherwise orders—

(i) no person may commence or proceed with any action or legal proceeding against the company or in relation to its assets;

(ii) no person may exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the company; and

(iii) no share in the company may be transferred;

(d) no alteration may be made in the status of or to the rights or liabilities of a member, whether by an

amendment of the memorandum or articles or otherwise;

(e) no member may exercise any power under the memorandum or articles, or otherwise, except for the purposes of this Act; and

(f) no amendment may be made to the memorandum or articles of the company.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

278. Restrictions on enforcement process already commenced

(1) Subject to subsections (2) and (3), a creditor is not entitled to retain the benefit of any execution process, sequestration, distress or attachment over or against the assets of a company in liquidation unless the execution, process or attachment is completed before—

(a) if the liquidator was appointed by the members under section 258, the earlier of—

(i) the date on which the creditor had notice of the calling of the meeting at which the resolution for the appointment of a liquidator was proposed; or

(ii) the date on which the liquidator was appointed; or

(b) if the liquidator was appointed by Court the date on which the application to appoint the liquidator was made.

(2) A person who, in good faith and for value, purchases assets of a company—

(a) from an officer charged with an execution process, or

(b) on which distress has been levied,

acquires a good title to the assets as against the liquidator of the company.

(3) The Court may set aside the application of subsection (1) to the extent and subject to such terms as it considers appropriate.

(4) For the purposes of this section—

(a) an execution or distraint against personal property is completed by seizure and sale;

(b) an attachment of a debt is completed by the receipt of the debt; and

(c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

279. Duties of officer in execution process

(1) Subject to subsection (6), if—

(a) assets of a company are taken in an execution process, and

(b) before completion of the execution process the officer charged with the execution process receives notice that a liquidator or a provisional liquidator of a company has been appointed,

he shall, on being required by the liquidator or provisional liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the liquidator or provisional liquidator.

(2) The costs of the execution process are a first charge on any asset delivered or transferred to the liquidator under subsection (1) and the liquidator or provisional liquidator may sell all or some of the assets to satisfy that charge.

(3) Subject to subsection (6), if, in an execution process in respect of a judgement for a sum exceeding $500, assets of a company are sold or money is paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of fourteen days.

(4) If—

(a) within the period of fourteen days referred to in subsection (3), the officer has notice that—

(i) a meeting of the members of the company has been called at which a special resolution to appoint a liquidator is to be proposed, or

(ii) an application for the appointment of a liquidator of the company has been made to the Court, and

(b) a liquidator is appointed in respect of the company,

the officer shall deduct the costs of execution from the amount that he has retained under subsection (3) and pay the balance to the liquidator.

(5) A liquidator to whom money has been paid under subsection (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the rights conferred on a liquidator under this section to the extent and subject to such terms as it considers appropriate.

Notice of Appointment and Initial Meeting of Creditors

280. Notice of appointment

The liquidator of a company shall, within fourteen days of the date of his appointment—

(a) advertise his appointment in accordance with the Regulations;

(b) file notice of his appointment with the Registrar;

(c) serve notice of his appointment on the company in respect of which he was appointed; and

(d) if he has been appointed in respect of a company that is or at any time has been a financial institution, serve notice of his appointment on the Commission.

281. Liquidator to call first meeting of creditors

(1) Subject to section 285, the liquidator of a company shall call a meeting of the creditors of the company (the first creditors' meeting) to be held within twenty-one days of the date of his appointment—

(a) by sending a notice of the meeting to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting in accordance with the Regulations.

(2) During the period before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with—

(a) a list of the creditors of the company known to the liquidator; and

(b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors' meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.

(4) At the first creditors' meeting, the creditors may—

(a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or

(b) in the case of a liquidator appointed by the Court, resolve to make application to the Court for the appointment of another liquidator in his place; and

(c) in either case, appoint a creditors' committee.

282. Application to Court by members

If at a meeting held in accordance with section 281 the creditors appoint a liquidator in the place of the liquidator appointed by the members, a director, member or creditor of the company may apply to the Court for an order that—

(a) the person appointed by the members is appointed liquidator, or

(b) some other eligible insolvency practitioner is appointed as liquidator,

in either case, instead of or jointly with the liquidator appointed by the creditors.

283. Application of sections 281 and 282

(1) Subject to subsection (2), sections 281 and 282 do not apply to a liquidator appointed to act—

(a) jointly with an existing liquidator; or

(b) in place of a liquidator who has died or otherwise ceased to act.

(2) If the first liquidator of a company dies or ceases to act before sections 281 and 282 have been fully complied with, those sections apply to his successor and any continuing liquidator until the sections have been fully complied with.

284. Restrictions on powers of liquidator appointed by members

Despite section 288, in the case of a liquidator appointed by the members of a company, during the period before the holding of the first creditors' meeting called under section 281, the powers of the liquidator are limited to—

(a) taking into his custody and control all the assets to which the company is or appears to be entitled;

(b) disposing of perishable goods and other assets the value of which is likely to diminish if they are not immediately disposed of;

(c) doing all such things as may be necessary to protect the company's assets; and

(d) exercising such other of the powers conferred on a liquidator by section 288 as the Court may, on his application, sanction.

285. Court appointed liquidator may dispense with creditors' meeting

A liquidator appointed by the Court is not required to call a meeting of creditors under section 281 if—

(a) he considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;

(b) he gives notice to the creditors stating—

(i) that he does not consider it necessary for a meeting to be held;

(ii) the reasons for his view; and

(iii) that a meeting will not be called unless 10% in value of the creditors give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called; and

(c) no notice requiring a meeting to be held is received by him.

Liquidators

286. Status of liquidator

(1) In performing his functions and undertaking his duties under this Act, a liquidator, whether appointed by resolution of the members or by the Court, acts as an officer of the Court.

(2) A liquidator is the agent of the company in liquidation.

287. General duties of liquidator

(1) The principal duties of a liquidator of a company are—

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Act; and

(c) if there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Act.

(2) The liquidator shall, subject to this Act and the Regulations, use his own discretion in undertaking his duties.

(3) If it appears to the liquidator that the company has carried on unlicensed financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

(4) If the liquidator makes a report to the Commission under subsection (3), he shall—

(a) send to the Commission a copy of every notice or other document that he is required under this Part to send to a creditor or the Court; and

(b) notify the Commission of any application made to the Court in or in connection with the liquidation.

(5) A liquidator also has the other duties imposed by this Act and the Regulations and such duties as may be imposed by the Court.

288. General powers of liquidator

(1) A liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator under this Act and the powers conferred on him by this Act.

(2) Without limiting subsection (1), a liquidator has the powers specified in Schedule 1.

(3) The Court may provide that certain powers may only be exercised with the sanction of the Court—

(a) if the liquidator is appointed by the Court, on his appointment or subsequently; or

(b) if the liquidator is appointed by the members, at any time.

(4) If a liquidator disposes of any assets of the company to a person connected with the company, he shall notify the creditors' committee, if any, of such disposition.

(5) The liquidator of a company, whether or not appointed by the Court, may at any time apply to the Court for directions in relation to a particular matter arising in the liquidation.

(6) The acts of a liquidator of a company are valid, despite any defect in his nomination, appointment or qualifications.

289. Removal of liquidator

(1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if—

(a) the liquidator—

(i) is not eligible to act as an insolvency practitioner in relation to the company;

(ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Regulations or any Regulations made under this Act or, in his capacity as liquidator, under any other enactment or law in Montserrat; or

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that—

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the liquidator has an interest that conflicts with his role as liquidator; or

(iii) that for some other reason he should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by—

(a) the creditors' committee;

(b) a creditor of the company or, with the leave of the Court, a member of the company; or

(c) the Official Receiver.

(3) If the Court removes a liquidator from office under this section—

(a) if, following his removal, there is at least one liquidator remaining in office, the Court may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator removed was the sole liquidator of the company, the Court shall appoint the Official Receiver or an eligible insolvency practitioner as liquidator in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers appropriate.

290. Resignation of liquidator

(1) A liquidator of a company—

(a) shall resign if he is no longer eligible to act as an insolvency practitioner in relation to the company; but

(b) otherwise may only resign in accordance with this section.

(2) If a liquidator resigns under subsection (1)*(a)*, he shall send a notice of his resignation to—

(a) the creditors of the company;

(b) the Registrar;

(c) the Official Receiver; and

(d) if he was appointed by the Court, to the Court

and his resignation takes effect from the date that the notice is received by the Official Receiver.

(3) A liquidator may resign in accordance with subsection (5)—

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(4) Despite subsection (3), if joint liquidators are appointed in respect of a company, one or more of the joint liquidators may resign in accordance with subsection (5) if—

(a) all the joint liquidators are of the opinion that it is no longer necessary or expedient for the resigning liquidator or liquidators to continue in office; and

(b) at least one of them will remain in office.

(5) If the liquidator of a company intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he shall call a meeting of creditors for the purpose of accepting his resignation as liquidator.

(6) If the creditors resolve to accept the resignation of a liquidator, they may appoint an eligible insolvency practitioner as liquidator in his place.

(7) If the creditors refuse or fail to accept the resignation of the liquidator, he may apply to the Court for leave to resign in accordance with the Regulations.

(8) This section does not apply to the Official Receiver when acting as the liquidator of a company.

291. Appointment of replacement liquidator

(1) If the liquidator of a company dies or resigns under section 290(1) and no liquidator is appointed in his place, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one liquidator remaining in place, may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator who has died or resigned was the sole liquidator of the company, shall appoint the Official Receiver or an eligible insolvency practitioner in his place.

(2) An application under subsection (1) may be made—

(a) by any continuing liquidator;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

(3) If the Official Receiver is the liquidator of a company, an eligible insolvency practitioner may be appointed in his place—

(a) on the application of the Official Receiver, by the Court; or

(b) with the consent of the Official Receiver, by resolution of the creditors at a meeting called by the Official Receiver for that purpose.

(4) An application may be made under subsection (3) even though the Court has refused to make an appointment on a previous application by the Official Receiver.

292. Remuneration of liquidator

The remuneration payable to the liquidator of a company shall be fixed applying the principles specified in the Regulations.

293. Notification of liquidation on public documents

(1) If a company is in liquidation the company's website, if any, and every document of a type specified in subsection (2) shall—

(a) contain a statement that the company is in liquidation; and

(b) specify the name of the liquidator.

(2) Subsection (1) applies to—

(a) every public document issued by or on behalf of the company;

(b) every public document issued by or on behalf of the liquidator of the company on which the name of the company appears.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) If subsection (1) is contravened each liquidator of the company who, without reasonable excuse, causes, permits or acquiesces in the contravention, commits an offence and is liable on summary conviction to a fine of $20,000.

294. Vesting of assets in liquidator

(1) On the application of the liquidator of a company, the Court may order that all or any part of the assets of the company, or held by trustees on its behalf, shall vest in the liquidator from the date of the order.

(2) On the making of an order under subsection (1), the assets covered by the order vest in the liquidator by his official name.

(3) The liquidator of a company may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to the vested assets or which it is necessary to bring or defend for the purposes of liquidating the company and recovering its assets.

Liability of Members and Former Members

295. Settlement of list of members

(1) Subject to subsection (7), the liquidator of a company shall, as soon as practicable after his appointment, settle a

list of the members of the company containing the information and in the specified form.

(2) Immediately after settling the list of members, the liquidator shall give notice to every person included in the list that he has done so in accordance with the Regulations.

(3) If a person objects to any entry in, or exclusion from, the list of members as settled by the liquidator and the liquidator declines to accept the objection, the person may apply to the Court for an order removing the entry to which he objects or modifying the entry.

(4) An application under subsection (3) shall be made within twenty-one days of the service on the applicant of the liquidator's notice declining to accept the objection.

(5) The liquidator of a company is not personally liable for the costs incurred by a person in an application under subsection (3) unless the Court makes an order to that effect.

(6) The liquidator may from time to time vary or add to the list of members as previously settled by him and any variation or addition is subject, as regards any person affected, to the provisions of this Act and the Regulations applicable to the settling of the list.

(7) The liquidator is not required to settle a list of members under this section if it appears to him that it will not be necessary to require any member to contribute to the assets of the company or to adjust the rights of members.

296. Rectification of register of members

(1) If it appears to the liquidator of a company that the register of members of the company should be rectified, he may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may rectify the register of members of the company.

297. Liability of members and former members

(1) Subject to sections 299 to 302, every member and former member of a company in liquidation is liable to contribute to the assets of a company in liquidation for the payment of its liabilities, for the expenses of the liquidation and for the adjustment of the rights of the members between themselves.

(2) The liability of a member or former member under this section creates a contract debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

298. Liability of members limited

(1) The liability of a member under section 297 is limited to—

(a) any amount unpaid on a share held by the member, including any liability for calls; and

(b) any liability expressly provided for in the memorandum or articles, including such contribution as the guarantee member of a company limited by guarantee may have undertaken to make in the event of the company being wound up.

(2) Subsection (1) does not affect—

(a) any liability of the member to pay or repay monies to the company imposed by a provision of this Act or the Companies Act; or

(b) any liability of a member to the company under a contract, including a contract for the issue of shares, or for any tort, breach of fiduciary duty or other actionable wrong committed by the member.

299. Liability of former members limited

(1) Subject to subsection (2), unless the Court is satisfied that the members of a company are able to discharge the liabilities set out in section 297, a former member of a company in liquidation is liable to contribute to the assets

of the company for the purposes specified in that section to the same extent as a member.

(2) A former member—

(a) has no liability under section 297 if he ceased to be a member more than one year before the commencement of the liquidation; and

(b) is not liable to contribute to the assets of the company in respect of any liability of the company contracted after he ceased to be a member.

300. Liability of personal representative

The personal representatives of a member or former member liable to contribute under section 297 who has died, are liable to contribute out of his estate to the assets of the company under section 297 to the same extent as the member.

301. Effect of member or former member becoming bankrupt

The liquidator of a company is entitled to submit a claim in the bankruptcy or liquidation of any member or former member of the company in respect of any contribution that the member or former member is required to make under section 297.

302. Status of personal representatives or bankruptcy trustee

The personal representatives and the bankruptcy trustee of a member or former member of a company in liquidation are entitled to make any application to Court, or take any such other action, as could be made or taken by the member or former member.

303. Insurance and other contracts not affected

Nothing in this Act invalidates any provision contained in a policy of insurance or other contract by which the liability of individual members on the policy or contract is restricted or by which the funds of the company are alone made liable in respect of the policy or contract.

304. Power of liquidator to enforce liability of member or former member

(1) The liquidator of a company may—

(a) if a member is liable to calls, make calls on that member; and

(b) if a member or former member is liable to the company, as a member under section 297, require him, by notice in writing, to discharge that liability.

(2) A call made under subsection (1)*(a)* shall be in writing and shall specify the amount of, or balance due in respect of, the call.

(3) The liability of a member under subsection (1) includes a liability of the estate of the person he represents.

(4) The liquidator may enforce the liability of a member under subsection (1) only if that member is on the list of members settled by him under section 295.

305. Summary remedy against members and former members

(1) The liquidator may apply to the Court for an order under this section if—

(a) a member of a company fails to comply with a call made under section 304(1)*(a)*; or

(b) a member or former member fails to satisfy a liability when required to do so under section 304(1)*(b)*.

(2) On an application under subsection (1), the Court may order a member or former member to pay to the company any money due from him, or due from the estate of the person who he represents.

(3) When all the creditors of a company are paid in full, together with interest at the judgment rate, any money due on any account whatever to a member from the company may be allowed to the member by way of set-off against any subsequent call.

306. Order under section 305 to be conclusive evidence

An order made against a member under section 305 is, subject to any right of appeal, conclusive evidence that the money, if any, ordered to be paid is due.

Claims

307. Distribution of assets of company

(1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in liquidation shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying the preferential claims admitted by the liquidator in accordance with the provisions for the payment of preferential claims prescribed by the Regulations;

(c) after payment of the preferential claims, in paying all other claims admitted by the liquidator; and

(d) after paying all admitted claims, in paying any interest payable under section 316.

(2) Subject to section 251, the claims referred to in subsection (1)*(c)* rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be distributed to the members in accordance with their rights and interests in the company.

(4) For the purposes of this Act, assets held by a company in liquidation on trust for another person are not assets of the company.

308. Sums due to members

(1) A claim by a person who is or was a member of a company, in his character as member, whether by way of dividend, profits, redemption proceeds or otherwise, ranks in priority after the claims of other creditors who are not members, including interest at the judgment rate on the claims of such creditors.

(2) Claims specified in subsection (1) shall be taken into account for the purpose of the final adjustment of the rights of members amongst themselves.

309. Claims having priority over floating charges

So far as the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay—

(a) the costs and expenses of the liquidation in accordance with the prescribed priority; and

(b) the preferential creditors;

those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

310. Claims by unsecured creditors

(1) An unsecured creditor may make a claim against a company in liquidation by submitting to the liquidator a written claim, signed by him or on his behalf.

(2) The liquidator may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (7), as soon as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the liquidator may have imposed under subsection (2), the liquidator shall either admit or reject the claim in whole or in part.

(4) If the liquidator rejects the claim, whether in whole or in part, he shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the liquidator under subsection (2).

(6) The liquidator shall not admit a claim against the company unless it has been made in accordance with this section.

(7) The liquidator is not required to admit or reject claims under subsection (3) at any time when it appears to him that the company has insufficient assets to enable a distribution to be made to unsecured creditors.

(8) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim,

commits an offence.

(9) A person who commits an offence under subsection (8) is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

311. Variation, withdrawal and expunging of claims

(1) A claim made under section 310 may—

(a) be amended or withdrawn by the creditor at any time before the liquidator has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the liquidator at any time after the liquidator has admitted it.

(2) The Court, on the application of the liquidator or, if the liquidator declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

312. Claims by secured creditors

(1) A secured creditor may—

(a) value the assets subject to the security interest and claim in the liquidation of a company as an unsecured creditor for the balance of his debt, or

(b) surrender his security interest to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole of his debt,

but he is not obliged to do either.

(2) A secured creditor may, at any time, apply to the liquidator to amend the value that he placed on the security interest in his claim.

(3) If, on receiving an application under subsection (2), the liquidator is satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed,

he may permit the secured creditor to amend the value that he places on the security interest.

(4) If the liquidator of a company is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)*(a)* or on an amendment under

subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the liquidator or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the liquidator are entitled to bid for and purchase them.

313. Redemption of security interest by liquidator

(1) If a secured creditor has claimed in the liquidation of a company under section 312(1)*(a)*, the liquidator may at any time give notice to the creditor that he proposes at the expiration of twenty-eight days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within twenty-one days of the date of the notice, apply to the liquidator to revise the value that he places on the security interest in accordance with section 312(2).

(3) At the expiration of twenty-eight days from the date of the notice under subsection (1), the liquidator may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the liquidator to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the liquidator to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) If, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the liquidator or on appeal to the Court, the liquidator may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the liquidator, require him to elect whether or not to exercise his power to redeem under this section.

(6) If a notice to elect is served on a liquidator under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

314. Realisation of security interest by secured creditor

(1) If a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the liquidator for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) If a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the liability secured—

(a) if the creditor has previously valued his security interest and claimed in the liquidation for the balance under section 312(1)*(a)*, the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the liquidation as an unsecured creditor for the balance of the secured liability.

(3) For the purposes of this section, the secured liability includes contractual interest payable to the secured creditor on the liability up to the time of its satisfaction.

315. Surrender for non-disclosure

(1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in the liquidation of a company, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct—

(a) that he is not required to surrender his security interest; and

(b) that he values his security interest and amends his claim accordingly.

316. Interest after commencement of liquidation

(1) Interest is payable on any claim in the liquidation of a company in respect of the period after the commencement of the liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the liquidation of a company shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the liquidation.

(3) Subject to section 251, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally and if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(4) The rate of interest payable under this section is the greater of—

(a) the judgment rate; and

(b) the rate that would be applicable to the claim if a liquidator of the company had not been appointed.

Distributions

317. Power to exclude creditors not claiming in time

(1) If the liquidator of a company has sufficient funds to make a distribution, he shall, subject to the retention of such sums as may be necessary for his remuneration and the other costs and expenses of the liquidation, by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims to him.

(2) If the liquidator sends a notice to creditors under subsection (1), a creditor who does not submit a claim on or before the date specified in the notice is excluded from the benefit of any distribution on or after that date that is made before he submits his claim.

(3) If the liquidator makes more than one distribution, subsections (1) and (2) apply to each distribution.

Disclaimer

318. Liquidator may disclaim onerous property

(1) For the purposes of this section, "**onerous property**" means—

(a) an unprofitable contract; or

(b) assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to section 220, the liquidator of a company may, by the giving of the notice prescribed by the Regulations, disclaim any onerous property of the company even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A liquidator who disclaims onerous property shall, within fourteen days of the date of the disclaimer notice, give

notice to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A liquidator who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of $25,000.

319. When disclaimer takes effect

(1) Subject to subsection (2), a disclaimer takes effect on the date of the disclaimer.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the liquidator is aware of their addresses, to every person claiming under the company as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 322 with respect to that property before the end of a period of fourteen days beginning with the day on which the last notice under this subsection was given; or

(b) if such an application is made, the Court directs that the disclaimer shall take effect.

(3) If the Court gives a direction under subsection (2)*(b)*, it may also, instead of or in addition to any order it makes under section 322, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

320. Notice to liquidator to elect whether to disclaim

(1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the liquidator, require him to elect whether or not to disclaim the property.

(2) If a notice to elect is served on a liquidator, he is not entitled to disclaim the property under section 318 unless he does so within twenty-eight days of the date of service of the notice on him or within such extended period as the Court may allow.

321. Effect of disclaimer

(1) A disclaimer of onerous property under section 318—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) except so far as is necessary to release the company from liability, does not affect the rights or liabilities of any other person.

(2) A person sustaining loss or damage as a result of a disclaimer of onerous property under section 318 may claim in the liquidation of the company as a creditor for the amount of the loss or damage.

322. Vesting orders and orders for delivery

(1) Subject to section 323, if a liquidator disclaims onerous property under section 318, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer.

(2) On an application under subsection (1), the Court may, on such terms as it considers appropriate, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer; or

(c) a trustee for a person referred to in paragraph *(a)* or *(b)*.

(3) The Court shall not make an order in respect of a person specified in subsection (2)*(b)*, or in respect of a trustee of such a person, unless it appears to the Court that it would

be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage sustained by a person for the purposes of section 321(2).

(5) Subject to subsection (6), if a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) If another enactment—

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that enactment enables the order to be registered,

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

323. Vesting orders in respect of leases

(1) If the Court makes an order under section 322 vesting property of a leasehold nature in a person claiming under the company in liquidation as an underlessee or a mortgagee, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him at the commencement of the liquidation.

(2) If the property vested by an order under section 322 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) If no underlessee or mortgagee is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the company, to perform the lessee's covenants in the lease; and

(b) if a vesting order is made under paragraph *(a)*, may vest the property free from all estates, encumbrances and interests created by the company.

(4) If an underlessee or a mortgagee declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

324. Land subject to rentcharge

If land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums except sums becoming due after he, or some person claiming title under or through him, has taken possession or control of the land or has entered into occupation of it.

325. Disclaimer presumed valid

Unless it is proved that a liquidator has breached his duty to give notice under section 318(3) or that he has otherwise breached his duties under this Act or the Regulations with regard to disclaimer, a disclaimer of property by the liquidator is presumed to be valid and effective.

Investigation of Assets and Affairs of Company

326. Statement of affairs

(1) The liquidator or provisional liquidator of a company may require one or more relevant persons to prepare a statement of affairs of the company.

(2) Subject to section 328, the liquidator or provisional liquidator shall file with the Court each statement of affairs and each affidavit of concurrence received.

(3) Subsection (2) does not apply to a liquidator appointed by the members of a company.

327. Release from duty to submit statement of affairs

(1) A liquidator, a provisional liquidator or the Court may, in accordance with the Regulations—

(a) release a person from an obligation to prepare and submit a statement of affairs; or

(b) extend the period of time for the submission of the statement of affairs.

(2) An order of the Court under this section may be made subject to such terms and conditions as the Court considers appropriate.

328. Application for order of limited disclosure.

(1) A liquidator or provisional liquidator who considers that it would prejudice the conduct of the insolvency proceeding for the whole or part of a statement of affairs to be disclosed, may apply to the Court for an order of limited disclosure in respect of the statement of affairs, or any specified part of it.

(2) The Court may, on an application under subsection (1), order that the statement of affairs or a specified part of it is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with the leave of the Court.

(3) An order of the Court under subsection (2) may include directions as to the filing of documents with the Registrar and the disclosure of information to other persons.

329. Preliminary report

(1) The liquidator of a company shall, within sixty days of the commencement of the liquidation, prepare a preliminary

report covering, to the best of the liquidator's knowledge and belief, the following matters—

(a) in the case of a company with share capital, the amount of capital issued, subscribed and paid up;

(b) in the case of a company limited by guarantee, the total amount which guarantee members are liable to contribute to the company;

(c) the assets and liabilities of the company;

(d) if the company has failed, the causes of the failure; and

(e) whether, in his opinion, further enquiries are desirable with respect to any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company

(2) The liquidator shall send a copy of the report prepared under subsection (1)—

(a) to each creditor of the company; and

(b) if in the report the liquidator states that further enquiries are desirable with respect to a matter referred to in subsection (1)*(e)*, to the Official Receiver.

(3) Subsection (2)*(b)* does not apply to the Official Receiver when acting as the liquidator of a company.

(4) The Court may, on the application of the liquidator, extend the period specified in subsection (1) on such terms and conditions as it considers appropriate.

330. Duty of Official Receiver concerning report under section 329

On receiving a report under section 329, the Official Receiver shall carry out such investigation, if any, as he considers appropriate.

Miscellaneous Provisions

331. Liquidator to call meetings of creditors

(1) The liquidator shall call a meeting of the creditors of a company in liquidation if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Regulations by 10 % in value of the creditors of the company.

332. Rescission of contracts by the Court

(1) On the application of a person who is, as against the liquidator of a company, entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court considers just.

(2) Any damages payable to a person under an order made under subsection (1) may be claimed as a debt in the liquidation of the company.

333. Inspection of books by creditors

(1) At any time after the appointment of a liquidator of a company, the Court may, on such terms as it considers appropriate, make an order for the inspection of specified books, records and documents of the company that are in its possession.

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

334. Enforcement of liquidator's duties

(1) In this section **"specified person"** means—

(a) the Official Receiver;

(b) a creditor of a company in liquidation; or

(c) a member of a company in liquidation.

(2) If a liquidator fails to file any notice, return, account or other document, a specified person may serve a notice on the liquidator requiring him to remedy the default.

(3) If a liquidator fails to remedy the default specified in a notice served under subsection (1) within fourteen days of service of the notice on him, any specified person may apply to the Court for an order that the liquidator remedy the default within such time as the Court may specify.

(4) The Court may order that the costs of and incidental to an application under this section are payable by the liquidator personally.

(5) A liquidator who fails to comply with an order made under subsection (3) commits an offence and is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

(6) This section does not limit any other provision of this Act or any other enactment.

Termination of Liquidation

335. Termination of liquidation

The liquidation of a company terminates on the first occurring of—

(a) the making by the Court of an order terminating the liquidation under section 336 or such later date as may be specified in the order;

(b) the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 337(1)*(b)*, as modified by the Court under section 337(3)*(b)*, if appropriate; or

(c) the making by the Court of an order under section 337(3)*(a)* exempting the liquidator from compliance with section 337(1) or such later date as may be specified in the order.

336. Order terminating liquidation

(1) The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company or the Official Receiver.

(3) Before making an order under subsection (1), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

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

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

(6) If the Court makes an order under subsection (1), the person who applied for the order shall, within ten days of the date of the order, file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of $10,000.

337. Completion of liquidation

(1) As soon as practicable after completing his duties in relation to the liquidation of a company, the liquidator shall—

(a) prepare and send to every creditor of the company whose claim has been admitted and to every member of the company—

(i) his final report, complying with subsection (2), and a statement of realisations and distributions in respect of the liquidation; and

(ii) a summary of the grounds upon which a creditor or member may object to the striking of the company from the Register; and

(b) file with the Registrar a copy the final report and the statement of realisations and distributions sent to the creditors and members of the company and a certificate of compliance with paragraph *(a)*.

(2) The final report of a liquidator shall contain a statement—

(a) that all known assets of the company have been disclaimed, realised or distributed without realisation;

(b) that all proceeds of realisation have been distributed; and

(c) that there is no reason why, in his opinion, the company should not be struck from the Register, and dissolved.

(3) On the application of the liquidator, the Court may on such terms and conditions as it considers just—

(a) exempt the liquidator from compliance with subsection (1)*(a)*; or

(b) modify the application of the provisions of subsection (1) to the liquidator.

338. Release of liquidator

(1) A person, other than the Official Receiver, who has ceased to be a liquidator of a company, has his release as follows—

(a) if the person has resigned as liquidator, as provided for in the Regulations;

(b) on the termination of the liquidation by the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 337(1)*(b)* as may be modified by the Court under section 337(3)*(b)*, unless the Court otherwise orders, at the time at which the person vacated office; or

(c) in any other case, as provided for in subsections (2) to (10).

(2) If a person has been removed by the Court as liquidator under section 290 or the Court has terminated the liquidation by order made under section 336, the Court may, when making the order—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(3) A person, other than the Official Receiver, who has ceased to be a liquidator of a company and who has not obtained his release in accordance with subsection (1) or (2) or a person who has ceased to be the provisional liquidator of a company, may apply to the Court for his release and the Court may—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(4) Subject to subsection (7), if a former liquidator is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the company.

(5) An order for the release of a former liquidator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(6) If the Official Receiver ceases to be liquidator and another liquidator is appointed in his place, the Official Receiver obtains his release—

(a) from the appointment of the new liquidator; or

(b) such later date as the Court may determine.

(7) In any other case, the Official Receiver obtains his release as provided by the Regulations.

(8) A liquidator who obtains his release under this section shall file a notice in the specified form with the Registrar.

339. Dissolution

The Regulations shall provide for the dissolution of a company on the termination and completion of the liquidation of the company.

Liquidation of Unregistered Companies

340. Grounds for appointment of liquidator of unregistered company

(1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of an unregistered company if—

(a) it is insolvent;

(b) it is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

(c) it has ceased to carry on business;

(d) it is carrying on business only for the purpose of winding up its affairs;

(e) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(f) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(f)*—

(a) the "public" includes the public within and outside Montserrat; and

(b) the preservation of the reputation of Montserrat is a matter of public interest.

(3) The Court shall not appoint a liquidator of an unregistered company unless it is satisfied that it has a connection with Montserrat.

(4) For the purposes of subsection (3), an unregistered company has a connection with Montserrat only if—

(a) it has or appears to have, or to have had, assets in Montserrat;

(b) it is carrying on, or has carried on or purported to carry on, business in Montserrat; or

(c) there is a reasonable prospect that the appointment of a liquidator of the unregistered company under this Part will benefit the creditors of the company.

(5) An application for the appointment of a liquidator of an unregistered company may be made—

(a) even though it has been dissolved or has otherwise ceased to exist under or by virtue of the laws of any other country; and

(b) whether or not it is or has been registered under XII of the Companies Act.

(6) The Commission may only make an application to appoint a liquidator under subsection (1) if the unregistered company concerned is or at any time has been a financial institution or the company is carrying on, or at any time has carried on, unlicensed financial services business.

341. This Part to apply subject to Regulations

Subject to the modifications and exceptions set out in this Part or the Regulations, the provisions of this Part apply to an application to appoint a liquidator of an unregistered company and to the liquidation of an unregistered company.

Division 4 – Voidable Transactions

342. Interpretation

In this Division—

"company" means a company in liquidation;

"connected person" has the meaning specified in the Regulations;

"insolvent liquidation" means a liquidation of a company where the assets of the company are insufficient to pay its liabilities and the expenses of the liquidation;

"insolvency transaction" has the meaning specified in section 343;

"onset of insolvency" means—

(a) if the liquidator was appointed by the Court, the date on which the application for the appointment of the liquidator was filed; or

(b) if the liquidator was appointed by the members, the date of the liquidator's appointment; and

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a floating charge that is voidable under section 346; and

(d) an extortionate credit transaction; and

"vulnerability period", means—

(a) for the purposes of sections 344, 345 and 346—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing two years before the onset of insolvency and ending on the appointment of the liquidator; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months before the onset of insolvency and ending on the appointment of the liquidator; and

(b) for the purposes of section 347, the period commencing five years before the onset of insolvency and ending on the appointment of the liquidator.

343. Meaning of "insolvency transaction"

(1) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the company is insolvent; or

(b) it causes the company to become insolvent.

(2) For the purposes of subsection (1)—

(a) a company—

(i) is presumed to have been insolvent if, at the time, either of the circumstances specified in section 245(1)*(a)* applied to it; and

(ii) was insolvent if, at the time, section 245(1)*(b)*(i) applied to it; and

(b) section 245(1)*(b)*(ii) has no application.

344. Unfair preferences

(1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the company going into insolvent liquidation, would be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside Montserrat.

(4) Where a transaction entered into by a company within the vulnerability period has the effect specified in subsection (1)*(c)* in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

345. Undervalue transactions

(1) Subject to subsection (2), a company enters into an undervalue transaction with a person if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and

(c) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if—

(a) the company enters into the transaction in good faith and for the purposes of its business; and

(b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside Montserrat.

(4) Where a company enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)*(a)* or subsection (1)*(b)*, unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

346. Voidable floating charges

(1) Subject to subsection (2), a floating charge created by a company is voidable if—

(a) it is created within the vulnerability period; and

(b) it is an insolvency transaction.

(2) A floating charge is not voidable to the extent that it secures—

(a) money advanced or paid to the company, or at its direction, at the same time as, or after, the creation of the charge;

(b) the amount of any liability of the company discharged or reduced at the same time as, or after, the creation of the charge;

(c) the value of assets sold or supplied, or services supplied, to the company at the same time as, or after, the creation of the charge; and

(d) the interest, if any, payable on the amount referred to in paragraphs *(a)* to *(c)* pursuant to any agreement under which the money was advanced or paid, the liability was discharged or reduced, the assets were sold or supplied or the services were supplied.

(3) For the purposes of this section, where a company creates a floating charge in favour of a connected person within the vulnerability period, unless the contrary is proved, it is presumed that the charge was an insolvency transaction.

(4) For the purposes of subsection (2)*(c)*, the value of assets or services sold or supplied is the amount in money which, at the time they were sold or supplied, could reasonably have been expected to be obtained for the sale or supply of the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which the assets or services were sold or supplied to the company.

347. Extortionate credit transactions

A transaction entered into by a company within the vulnerability period for, or involving the provision of, credit to the company is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

348. Orders in respect of voidable transactions

(1) Subject to section 349, where it is satisfied that a transaction entered into by a company is a voidable

transaction the Court, on the application of the liquidator—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers appropriate for restoring the position to what it would have been if the company had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the liquidator of any sums paid by the company to that person by virtue of the transaction;

(iii) the surrender by any person to the liquidator of any asset held by him as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)*(b)*, an order under that paragraph may—

(a) require any assets transferred as part of the transaction to be vested in the company;

(b) require any assets to be vested in the company if it represents in any person's hands the application either of the proceeds of sale of assets transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the company or the liability of the company under any contract;

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any assets and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to submit a claim in the liquidation of the company in such amount as the Court considers appropriate; and

(h) require the company to make a payment or transfer assets to any person affected by an order made under subsection (1).

(3) Subject to section 349, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction.

349. Limitations on orders under section 348

(1) This section applies to an order made under section 348 in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in assets that was acquired in good faith and for value from a person other than the

company, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the company.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph *(a)* or *(b)*, it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of–

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if—

(a) in the case of a company in administration, he had notice of the filing of the application on which the administration order was made;

(b) in the case of a company where a liquidator was appointed immediately following the discharge of an administration order, he had notice of the filing of the application on which the administration order was made or the filing of the application on which the order appointing a liquidator was made; or

(c) in the case of a company where a liquidator was appointed in circumstances other than those set out in

paragraph *(b)*, he had notice of the filing of the application on which the order appointing a liquidator was made.

350. Recoveries

Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 248 are deemed to be assets of the company available to pay unsecured creditors of the company.

351. Remedies not exclusive

The provisions of this Part apply without prejudice to the availability of any other remedy, even in relation to a transaction that the company had no power to enter into.

Division 5 – Malpractice

352. Scope of this Division

This Division applies in relation to a company if a liquidator of the company is appointed at a time when the company's assets are insufficient to pay its liabilities and the expenses of the liquidation.

353. Summary remedy against delinquent directors and others

(1) On the application of the liquidator of a company to which this Division applies, the Court may make an order under subsection (3) where it is satisfied that a person specified in subsection (2)—

(a) has misapplied or retained, or become accountable for any money or other assets of the company; or

(b) has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) An order under subsection (3) may be made against a person—

(a) who is or has been a director or other officer of the company;

(b) who has acted as liquidator of the company;

(c) who has acted as receiver-manager of the company;

(d) who has acted as a receiver appointed by the Court; or

(e) who, not being a person falling within paragraphs *(a)* or *(b)*, is or has been concerned in the promotion, formation, management, liquidation or dissolution of the company.

(3) Where subsection (1) applies, the Court may make one or more of the following orders against the person—

(a) that he repays, restores or accounts for the money or other assets, or any part of it;

(b) that he pays to the company as compensation for the misfeasance or breach of duty such sum as the Court considers just; and

(c) that he pays interest to the company at such rate as the Court considers just.

(4) The Court shall not make an order under subsection (3) unless it has given the person the opportunity—

(a) to give evidence, call witnesses and bring other evidence in relation to the application; and

(b) to be represented, at his own expense, by an attorney-at-law who may put to him, or to other witnesses, such questions as the Court may allow for the purpose of explaining or qualifying any answers or evidence given.

(5) Application may not be made for an order under this section against a liquidator who has been released, except with the leave of the Court.

(6) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

354. Fraudulent trading

(1) On the application of the liquidator of a company to which this Division applies, the Court may make an order under

subsection (2) where it is satisfied that, at any time before the commencement of the liquidation of the company, any of its business has been carried on—

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose.

(2) Where subsection (1) applies, the Court may declare that any person who was knowingly a party to the carrying on of the business in such manner is liable to make such contribution, if any, to the company's assets as the Court considers proper.

355. Insolvent trading

(1) On the application of the liquidator of a company to which this Division applies, the Court may make an order under subsection (2) against a person who is or has been a director or other officer of the company if it is satisfied that—

(a) at any time before the commencement of the liquidation of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(b) the person was a director or other officer of the company at that time.

(2) Subject to subsection (3), where subsection (1) applies, the Court may order that that the person concerned makes such contribution, if any, to the company's assets as the Court considers proper.

(3) The Court shall not make an order against a person under subsection (2) if it is satisfied that after he first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step reasonably open to him to minimise the loss to the company's creditors.

(4) For the purposes of subsections (1) and (3), the facts which a director or other officer of a company ought to know or ascertain, the conclusions which he ought to reach and the steps reasonably open to him which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director or officer in relation to the company; and

(b) the general knowledge, skill and experience that that director or officer has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director or other officer of the company includes any function which he does not carry out but which has been entrusted to him.

(6) Nothing in this section affects section 354.

356. Recoveries under sections 354 and 355

Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 354 or 355 are deemed to be assets of the company available to pay unsecured creditors of the company.

357. Ancillary orders

(1) Where the Court makes an order under section 354 or 355, it may give such directions or make such further order as it considers proper for giving effect to the order.

(2) Without limiting subsection (1), the Court may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or

through the person liable or any person acting on his behalf; and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), "**assignee**"—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the court makes a declaration under either section 354 or 355 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest on the debt shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 354 and 355 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

358. Fraudulent conduct

(1) Where a liquidator of a company was appointed by the Court, a person who is or has been a director or other officer of the company is deemed to have committed an offence if, at any time whilst a director or officer or during the period of twelve months preceding the commencement of the liquidation, he has—

(a) made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in

the levying of any execution against the company's assets; or

(b) has concealed or removed any of the company's assets since, or within, sixty days of the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person is not guilty of an offence under this section–

(a) by reason of conduct constituting an offence under subsection (1)*(a)* which occurred more than five years before the commencement of the liquidation; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction to—

(i) twelve months' imprisonment; or

(ii) a fine of $50,000.

(b) on conviction on indictment to—

(i) five years' imprisonment; or

(ii) a fine of $100,000.

359. Malpractice in anticipation, and after commencement, of liquidation

(1) Where a liquidator of a company is appointed by the Court or by the members, any person, being a past or present director or other officer of the company, is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has—

(a) concealed any of the company's assets to the value of $300 or more or concealed any debt due to or from the company;

(b) fraudulently removed any of the company's assets to the value of $300 or more;

(c) concealed, destroyed, mutilated, altered or falsified any book or paper affecting or relating to the company's assets or affairs, including any security;

(d) made any false entry in any register, book or document belonging to the company or affecting or relating to its assets or affairs;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's assets or affairs; or

(f) pawned, pledged or disposed of any assets of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(2) A person specified in subsection (1)—

(a) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has been privy to the doing by others of any of the things mentioned in paragraphs *(c)*, *(d)* or *(e)* of subsection (1); and

(b) commits an offence if, at any time after the commencement of the liquidation, the person does any of the things mentioned in paragraphs *(a)* to *(f)* of subsection (1), or is privy to the doing by others of any of the things mentioned in paragraphs *(c)* to *(e)* of that subsection.

(3) It is a defence—

(a) to a charge under—

(i) subsection (1)*(a)* or *(f)*; or

(ii) subsection (2) in respect of the things mentioned in either of those two paragraphs,

if the person charged proves that he had no intent to defraud; or

(b) to a charge under—

(i) subsection (1) *(c)* or *(d)*; or

(ii) subsection (2) in respect of the things mentioned in either of those two paragraphs,

if the person charged proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) Where a person pawns, pledges or disposes of any assets in circumstances which amount to an offence under subsection (1)*(f)*, every person who takes in pawn or pledge, or otherwise receives, the assets knowing them to be pawned, pledged or disposed of in such circumstances, commits an offence.

(5) A person who commits an offence under this section is liable—

(a) on summary conviction to—

(i) twelve months' imprisonment; or

(ii) a fine of $50,000.

(b) on conviction on indictment to—

(i) two years' imprisonment; or

(ii) a fine of $100,000.

360. Misconduct in course of liquidation

(1) Where a company is in liquidation, any person, being a past or present director or other officer of the company, commits an offence if the person—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's assets, and how and to whom and for what consideration and when the company disposed of any of its assets (except such assets as have been disposed of in the ordinary way of the company's business);

(b) does not deliver up to the liquidator, or as the liquidator directs, all assets of the company in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator as soon as practicable; or

(e) after the commencement of the liquidation, prevents the production of any book or paper affecting or relating to the company's assets or affairs.

(2) A person specified in subsection (1)—

(a) commits an offence if, after the commencement of the liquidation, he attempts to account for any part of the company's assets by fictitious losses or expenses; and

(b) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, he has attempted to account for any part of the company's assets by fictitious losses or expenses at any meeting of the company's creditors.

(3) It is a defence to a charge under—

(a) paragraph *(a)*, *(b)* or *(c)* of subsection (1), if the person charged proves that he had no intent to defraud; or

(b) paragraph *(e)* of subsection (1), if the person charged proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

361. Falsification of company's books by member

(1) Where a company is in liquidation, a member of the company commits an offence if he—

(a) destroys, mutilates, alters or falsifies any books, papers or securities; or

(b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person.

(2) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

362. Material omissions from statement relating to company's affairs

(1) Where a company is in liquidation, any person, being a past or present director or other officer of the company—

(a) commits an offence if he makes any material omission in any statement relating to the company's affairs; and

(b) is deemed to have committed that offence if, before liquidation, he has made any material omission in any such statement.

(2) It is a defence to a charge under this section if the person charged proves that he had no intent to defraud.

(3) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

363. False representations to creditors

(1) Where a company is in liquidation, any person, being a past or present director or other officer of the company—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the liquidation; and

(b) is deemed to have committed that offence if, before liquidation, he has made any false representation, or committed any other fraud, for that purpose.

(2) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

PART 15—INVESTIGATION OF COMPANIES

364. Definition of "inspector"

In this Part, **"inspector"** means an inspector appointed by an order made under section 365(2).

365. Investigation order

(1) A member of a company or the Registrar may apply to the Court *ex parte* or on the notice that the Court may require, for an order that the company and any of its affiliates be investigated.

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

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud;

(b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or

(c) a person who is concerned with the incorporation, business or affairs of the company or any of its affiliates has in connection with the company or any of its affiliates acted fraudulently or dishonestly;

the Court may make any order it considers appropriate with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under subsection (1)—

(a) the member shall give the Registrar reasonable notice of the application; and

(b) the Registrar is entitled to appear and be heard at the hearing of the application.

(4) An applicant under this section is not required to give security for costs.

366. Court's powers

(1) An order under section 365(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) The Court may, make an order it considers appropriate with respect to the investigation, including an order to—

(a) replace the inspector;

(b) determine the notice to be given to an interested person, or dispense with notice to a person;

(c) authorise the inspector to enter any premises in which the Court is satisfied there may be relevant information and to examine anything, and to make a copy of a document or record found on the premises;

(d) require a person to produce a document or record to the inspector;

(e) authorise the inspector to conduct a hearing, administer an oath or affirmation and examine a person on oath or affirmation and prescribe rules for the conduct of the hearing;

(f) require a person to attend a hearing conducted by the inspector and to give evidence on oath or affirmation;

(g) give directions to the inspector or an interested person on a matter arising in the investigation;

(h) require the inspector to make an interim or final report to the Court;

(i) determine whether a report of the inspector should be published and if so, order the Registrar to publish the report or an extract from the report or send a copy of the report or an extract from the report to a person the Court designates;

(j) require an inspector to discontinue an investigation; or

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

(3) The inspector shall file a copy of each report he makes under this section.

(4) The Registrar may disclose a report filed under subsection (3) to a person only in accordance with an order of the Court made under subsection (2)*(i)*.

367. Inspector's powers

An inspector—

(a) has the powers set out in the order appointing him; and

(b) shall give an interested person a copy of the order on request.

368. Hearing in camera

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

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part—

(a) may appear and be heard at the hearing; and

(b) is entitled to be represented by an attorney-at-law appointed by him for the purpose.

(3) A person shall not publish a matter relating to proceedings under this Part unless authorised by the Court.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of $5,000.

369. Incriminating evidence

A person is not excused from attending a hearing conducted by, and giving evidence and producing documents and records to, an inspector appointed by the Court under this Part solely because the evidence may incriminate that person or subject him to any proceeding or penalty, but the evidence shall not be used or received against that person in any later proceeding instituted against him, other than a prosecution for perjury in giving the evidence.

370. Privilege

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

(2) Nothing in this Part affects the legal privilege that exists in respect of an attorney-at-law and his client.

PART 16—ADMINISTRATION AND GENERAL

371. Registrar of Companies

(1) The Governor—

(a) shall appoint a suitably experienced person to be Registrar of Companies, and

(b) may appoint one or more Deputy Registrars of Companies, on the terms and conditions he considers appropriate.

(2) The Registrar and any Deputy Registrars are employees of the Commission.

(3) The Registrar is responsible for the administration of this Act.

(4) A Deputy Registrar shall assist the Registrar in the performance of his duties and is subject to the general and specific directions of the Registrar.

(5) Whenever the Registrar is on leave, ill or otherwise unable to perform the duties of Registrar, the Deputy Registrar shall act as Registrar and while acting, has all the powers and duties of the Registrar.

(6) The Registrar and any Deputy Registrars are not liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.

372. Registers and qualifying documents

(1) The Registrar shall maintain—

(a) a Register of Companies;

(b) a Register of Foreign Companies;

(c) a Register of Registered Charges; and

(d) a Register of Persons with Significant Control.

(2) A Register maintained by the Registrar and the information contained in a document filed shall be kept in the manner that the Registrar considers fit, including, by means of a device or facility that—

(a) records or stores information magnetically, electronically or by other means; and

(b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar may establish systems and facilities to enable—

(a) the filing of a document and the provision of information to the Registrar in electronic form; and

(b) the issuance of certificates and other documents in electronic form.

(4) The Regulations may provide for the form and operation of the Registers.

(5) Without limiting subsection (4), the Regulations may—

(a) provide that—

(i) specified qualifying documents;

(ii) specified types or descriptions of qualifying documents;

(iii) qualifying documents filed by specified persons or by specified types or descriptions of person; or

(iv) all qualifying documents

may only be filed by electronic means; and

(b) specify requirements concerning—

(i) the keeping by the Registrar of the Registers, and of qualifying documents filed in electronic or any other form;

(ii) the filing of qualifying documents in both paper and electronic form; and

(iii) the issuance by the Registrar of certificates and other documents in electronic form.

(6) Regulations shall be made under subsection (5)*(a)* in relation to a qualifying document or documents only if the Registrar has established systems and facilities that enable a specified document to be filed in electronic form.

(7) Subject to subsection (8), the Registrar—

(a) shall retain each qualifying document filed; and

(b) shall not retain any document filed that is not a qualifying document.

(8) The Registrar shall not accept a qualifying document for filing unless the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

(9) For the purposes of this section, a document is a qualifying document if the Act or the Regulations, or another enactment, require or expressly permit the document to be filed.

373. Registration of particulars of members and directors

(1) A company shall, no more than fourteen days after its incorporation or continuation, file a notice in the approved form setting out the prescribed particulars of each member in, and each director of, the company.

(2) A company shall, no more than fourteen days after any change to the particulars recorded in its register of members or its register of directors, file a notice in the approved form setting out details of the change.

(3) The Registrar shall, on receipt of a notice under subsection (1) or (2), register the particulars in the Register of Companies against the company concerned.

374. Filing of returns, notices and documents

(1) A company shall file such returns, notices and documents as may be prescribed.

(2) Except as otherwise provided in this Act or the Regulations, a return, notice or other document required or permitted to be filed by a company under this Act, may only be filed—

(a) in the case of a company that is required to appoint a licensed company manager as its registered agent, other than a reporting company, by the registered agent of the company;

(b) in the case of a company that does not fall within paragraph *(a)*, by the company or the registered agent of the company; or

(c) if a liquidator is appointed in respect of a company, by the liquidator.

(3) The Regulations may provide for the filing and registration of documents, or certain specified types of document, on public holidays.

375. Inspection of Registers and documents filed

(1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may—

(a) inspect the Registers maintained by the Registrar under section 372(1);

(b) inspect and take an extract from any document retained by the Registrar in accordance with section 372(6);

(c) require a certified or uncertified copy of the certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy of any document or any part of a document of which the Registrar has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained in that document.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

(3) Subsection (2) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form.

(4) An extract certified by the Registrar as containing particulars of a registered document filed in electronic

form is, in the absence of proof to the contrary, conclusive evidence of the filing and registration of those particulars.

376. Certificate of good standing

(1) The Registrar shall, at a person's request issue a certificate of good standing certifying that a company is of good standing if he is satisfied that—

(a) the company is on the Register of Companies; and

(b) the company has paid fees and penalties that are due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain the statements specified in the Regulations.

(3) Despite subsection (1), the Registrar may refuse to issue a certificate of good standing if, in his opinion, it would not be in the public interest to do so.

377. Issue of other certificates

The Registrar may, at a person's request, issue a certificate confirming—

(a) information recorded on the Register in relation to a company; or

(b) the status of a company.

378. Fees and penalties to be paid to Registrar

(1) The prescribed fees and penalties shall be payable to the Registrar.

(2) Unless this Act or the Regulations provide otherwise, in the case of a company that is required to appoint a licensed company manager as its registered agent, other than a reporting company, the registered agent is the only person authorised to pay a prescribed fee or penalty to the Registrar, and the Registrar shall not accept a fee or penalty paid by any other person.

(3) The Registrar may refuse to take action required under this Act for which a fee is payable until a company pays the fee payable and all outstanding fees and penalties.

(4) A company that is struck off the Register of Companies is liable for the fees and penalties payable under this Act.

(5) Where permitted to do so by the Regulations, the Registrar may waive or reduce a prescribed penalty,

379. Recovery of fees and penalties

A fee or penalty payable under this Act or the Regulations that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable by the Commission before a Magistrate in civil proceeding despite the amount sought to be recovered.

380. Offence provisions

If a corporation commits an offence under this Act, a director or other officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

381. Time

(1) Unless this Act or the Regulations expressly provide otherwise, if the Act or the Regulations specify a time within which an action shall or may be done, the Court—

(a) may extend the time either before or after it has expired; or

(b) abridge the time,

on such terms as it considers appropriate.

(2) Without limiting subsection (1), if it is satisfied that an application is urgent, the Court may—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by the Act or the Regulations.

PART 17—MISCELLANEOUS AND TRANSITIONAL

382. Regulations

(1) The Governor acting on the advice of Cabinet may, after consultation with the Commission, make Regulations generally for giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may—

(a) prescribe—

(i) annual and other fees to be paid by companies and foreign companies to the Registrar;

(ii) fees payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act; and

(iii) fees or other amounts payable to the Registrar in respect of any other matter under this Act;

(b) prescribe annual and other returns, notices and documents to be filed by companies and foreign companies; and

(c) provide for penalties for any contravention of or failure to comply with specified requirements of this Act or the Regulations.

(3) The Regulations may make different provision in relation to different persons, circumstances or cases.

(4) The Regulations are subject to negative resolution of the Legislative Assembly.

383. Approval of forms by Commission

(1) If this Act or the Regulations require a document to be in the approved form, the Commission shall, by publication in the prescribed manner, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act or the Regulations, approve a form to be used for the document.

(3) If, under subsection (1) or (2), the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document shall—

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.

384. Guidance

The Commission may issue guidance concerning compliance with the requirements of this Act and the Regulations and concerning such other matters as it considers relevant to its functions under or in relation to this Act.

385. Jurisdiction

For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company is in Montserrat.

386. Declaration by Court

(1) A company may apply to the Court, by originating summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the articles of the company.

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

387. Judge in Chambers

A Judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

388. Transitional provisions and savings

The transitional provisions and savings are as set out in Schedule 2.

389. Amendment of Schedules

(1) The Governor acting on the advice of Cabinet may, after consultation with the Commission, by order amend the Schedules to this Act.

(2) An order made under subsection (1**)** is subject to a negative resolution of the Legislative Assembly.

390. Repeals and consequential provisions

(1) Subject to subsection (2), the former Acts are repealed at the end of the transition period.

(2) The following sections of the referenced Acts are repealed—

(a) sections 4, 5, 6, 7, 8, 9, 344 and 349 of the former Companies Act;

(b) sections 3 and 14 of the International Business Companies Act; and

(c) sections 6 and 9 of the Limited Liability Company Act.

(3) The Limited Partnership Act (Cap. 11.10) is repealed.

SCHEDULE 1

(section 288)

POWERS OF LIQUIDATOR

1. Power to pay any class of creditors in full.
2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.
3. Power to compromise, on such terms as may be agreed—
   (a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and
   (b) questions relating to or affecting the assets or the liquidation of the company,

   and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
4. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.
5. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.
6. Power to sell or otherwise dispose of property of the company.
7. Power to do all acts and execute, in the name and on behalf of the company, any deed~~s~~, receipt~~s~~ or other document.
8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the company.

    For the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself.

13. Power to call meetings of creditors or members for—

    (a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;

    (b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or

    (c) such other purpose connected with the liquidation as the liquidator considers appropriate.

14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.

15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

SCHEDULE 2

(section 288)

TRANSITIONAL PROVISIONS AND SAVINGS

1 Interpretation

In this Schedule—

"former Companies Act company" means a former Act company incorporated or continued under the former Companies Act;

"former Companies Register" means the Register of Companies maintained under the former Companies Act;

"IBC" means a former Act company incorporated on continued under the International Business Companies Act;

"IBC Register" means the Register of International Business Companies maintained under the International Business Companies Act;

"LLC" means a former Act company formed under the Limited Liability Company Act;

"LLC Register" means the Register of Limited Liability Companies maintained under the Limited Liability Company Act; and

"re-registration date", in relation to a former Act company means—

(a) in the case of a former Companies Act company and an IBC, the date when it is re-registered under this Act, whether on application under paragraph 3 or under paragraph 4(1); and

(b) in the case of a LLC, the date when it is re-registered under this Act on application under paragraph 3.

2 Application by former Act company to re-register under this Act

(1) A former Companies Act Company, an IBC or a LLC that, on the date immediately prior to the commencement of this Act, is on the former Companies Register, the IBC Register or the LLC Register may, during the transition period, apply to the Registrar to re-register as a company under this Act.

(2) An application for the re-registration of a former Act company as a company under this Act shall—

(a) be, and contain the information specified, in the approved form; and

(b) be accompanied by—

(i) articles of incorporation that, subject to subparagraph (4), comply with section 7;

(ii) a document signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration;

(iii) in the case of an application made by an IBC that is authorised by its Memorandum to issue bearer shares, a declaration that, as at the date of the application there are no bearer shares of the company in issue; and

(iv) such other documents as may be prescribed.

(3) In the case of a former Act company which, on its re-registration, will be a relevant company for the purposes of Part 5, Division 2 (Persons with Significant Control over a Relevant Company), a person applying to re-register the company shall provide the Commission with the PSC information for each person who is a registrable person in relation to the company and the PSC verification evidence with respect to that PSC information.

(4) In addition to the matters required under section 7, the articles shall state—

(a) the date that the company was first incorporated or, if appropriate, continued or registered as a consolidated company, under a former Act; and

(b) under which former Act it was governed before its re-registration under this Act.

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

(a) in the case of a former Companies Act company, a special resolution of the members of the company;

(b) in the case of an IBC, a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors; and

(c) in the case of a LLC, by a resolution of the members of the LLC.

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

3 Re-registration by the Registrar

(1) Subject to subparagraph (2), the Registrar, if satisfied that the requirements of this Act in respect of re-registration have been complied with, shall upon receipt of an application and the other documents specified in paragraph 2—

(a) register the documents;

(b) allot a unique number to the company; and

(c) issue a certificate of re-registration to the company in the approved form.

(2) The Registrar may refuse to re-register a former Act company under this Part if the company is in default of any obligation under a former Act under which it is incorporated, registered or continued, including an obligation to pay any fee or penalty due on or before the date of its re-registration.

(3) A certificate of re-registration is conclusive evidence that—

(a) all the requirements of this Schedule as to re-registration have been complied with; and

(b) the company is re-registered under this Act on the date specified in the certificate of re-registration.

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

(5) Except as otherwise provided in this Act, a company that is re-registered under this paragraph shall be subject to this Act as if it was a company incorporated under this Act and paragraphs 4, 5, 7, 8(1) to (3) and 9 to 11 do not apply to the company.

4 Former Act companies deemed to be re-registered under this Act

(1) Subject to the provisions of this paragraph, at the end of the transition period, every former Act company that is on the former Companies Register or the IBC Register is deemed to be re-registered under this Act.

(2) If the Registrar does not determine an application for the re-registration of a former Act company before the end of the transition period, the company is deemed to be re-registered under this Act in accordance with subparagraph (1).

(3) No certificate of re-registration shall be issued by the Registrar under paragraph 3 after the end of the transition period.

(4) If a company is re-registered under subparagraph (1), the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(5) The unique number allotted to a company under subparagraph (4) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as a former Act company.

5 Type of company on re-registration under paragraph 4(1)

(1) The following apply to a former Act company that is re-registered under paragraph 4(1)—

(a) if immediately prior to the commencement of this Act, the company is a former Companies Act company limited by shares or an IBC, it shall be re-registered under this Act as a company limited by shares; and

(b) if immediately prior to the commencement of this Act, the company is a former Companies Act company that is registered as a non-profit company, it shall be re-registered under this Act as a non-profit company.

(2) A former Companies Act company that, immediately prior to the commencement of this Act, is a public company shall be re-registered as a public company under this Act.

6 Use of word "Montserrat" in name of former Act company re-registered under this Act

For the avoidance of doubt, section 15(1)(f) does not apply to a former Act company on re-registration under this Act if the registered name of the company under the former Act, immediately before re-registration under this Act, contained the word "Montserrat".

7 Certificate of re-registration

(1) The Registrar shall not be required to issue a certificate of re-registration to a former Act company that is re-registered under paragraph 4(1) unless it applies for a certificate of re-registration and pays a fee of $25.00.

(2) A certificate of re-registration issued under subparagraph (1) shall state—

(a) the former Act under which the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or continued or registered as a consolidated company under the International Business Companies Act and the date of its incorporation, continuation or consolidation;

(b) the type of company that the former Act company is re-registered as; and

(c) that the former Act company was re-registered under this Act and the date of its re-registration.

8 Registered office and registered agent

(1) If a company is re-registered under paragraph 4(1), its registered office for the purposes of this Act is the registered office of the company under the former Act immediately before its re-registration.

(2) On the re-registration of a former Act company under paragraph 4(1), that, immediately before its re-registration, was an IBC, its registered agent is the person who was its registered agent under the IBC Act immediately before its re-registration.

(3) A former company which is re-registered under paragraph 4(1) shall, within two months of its re-registration—

(a) appoint a person eligible to act as registered agent under section 79 as its registered agent; and

(b) file a notice of appointment of its registered agent in the approved form.

(4) On the re-registration of a company under paragraph 3(1)—

(a) its registered office is the place specified in its application to re-register as its registered office; and

(b) its registered agent is the person specified in its application to re-register as its registered agent.

9 PSC Information

(1) A former Act company which is re-registered under paragraph 4(1) shall, if a relevant company, within two months of its re-registration, file a notice specifying the PSC information for each person who is a registrable person in relation to the company and file the PSC verification evidence with respect to that PSC information.

(2) A former Act company that contravenes subparagraph (1) commits an offence and is liable on summary conviction to a fine of $10,000.

10 Constitutional documents

(1) The following are deemed to be the articles of incorporation of a former Act company that is re-registered under paragraph 4(1)—

(a) in the case of a former Act company that was, immediately before its re-registration, a former company, its articles of incorporation; and

(b) in the case of a former Act company that was, immediately before its re-registration, an IBC, its memorandum of association.

(2) The following are deemed to be the by-laws of a former Act company that is re-registered under paragraph 4(1)—

(a) in the case of a former Act company that was, immediately before its re-registration, a former Companies Act company, its by-laws; and

(b) in the case of a former Act company that was, immediately before its re-registration, an IBC, its articles of association.

11 Dissolution of LLC and order declaring dissolution void

(1) A former Act company that is on the LLC Register at the end of the transition period, is deemed to be dissolved at the end of the transition period.

(2) An application may be made to the Court for an order declaring the deemed dissolution of a LLC under subparagraph (1) to be void.

(3) An application under subparagraph (2)—

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

(b) shall be made within two years of the end of the transition period.

(4) A person who makes an application under subparagraph (2) must serve a notice of the application on—

(a) the Registrar of Companies;

(b) the Financial Secretary; and

(c) if the company was a financial institution before its dissolution, the Commission;

and each person referred to in subparagraph (a) to (c,) is entitled to appear and be heard on the hearing of the application.

(5) On an application under subparagraph (2), the Court may declare the dissolution of the LLC void, subject to such conditions as the Court considers just.

(6) If the Court makes an order under subparagraph (5), the LLC is deemed—

(a) never to have been dissolved; and

(b) to have been re-registered as a company at the end of the transition period.

(7) If the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of re-registration to the company in the

approved form and the re-registration has effect from the date of the Court order or such other date as may be specified in the order.

(8) Sections 242 and 243 of this Act apply in relation to a LLC that is struck off under this paragraph as if the LLC was a company, with such modifications as the circumstances require.

12 Registration of charges created before commencement date

(1) This section applies to a company that is re-registered, on application or under paragraph 4(1).

(2) A company to which this section applies may apply to register a charge created before its re-registration date.

(3) Section 170 applies to an application made under subparagraph (1) as if the charge was a relevant charge.

(4) If a charge is registered in accordance with this paragraph—

(a) the charge shall be entered in the company's register of charges kept under section 169;

(b) sections 171, 172, 173, 175 and 176 apply with respect to the charge as if it was a relevant charge; and

(c) section 174 does not apply with respect to the charge, even though it is a charge created before the date this Act comes into force.

13 Savings in relation to winding up and dissolution of former Act companies

(1) If a former Companies Act company is, after the transition period, being wound up under Part IV of the Companies Act, the Companies Act continues to apply in relation to the winding up.

(2) Part IX of the International Business Companies Act continues to apply to the winding up and dissolution of an IBC after the repeal of the International Business Companies Act if, before the end of the transition period—

(a) articles of dissolution are registered by the Registrar pursuant to section 94(4) of the International Business Companies Act; and

(b) either the company has not been dissolved under section 94(6) of the International Business Companies Act or the articles of dissolution have not been rescinded under section 95 of that Act.

(3) Part VIII of the Limited Liability Company Act continues to apply to an LLC if, immediately before the end of the transition period, the LLC has been dissolved but not struck off the LLC Register or it is in the process of being wound up under section 51 of the Limited Liability Company Act.

(4) If an application made to the Court for the winding up of a former Act company made to the Court under a former Act has not been determined at the date this Act comes into force, the application shall be treated as if it was an application for the appointment of a liquidator under this Act.

14 Dissolution of IBCs

(1) An IBC that is struck off the IBC register under section 99 of the International Business Companies Act (Cap. 11.13), before the end of the transition period, but that is not deemed to be dissolved before the end of the transition period, if it remains struck off continuously for a period of ten years, shall be deemed to be dissolved with effect from the last day of the ten-year period.

(2) If this paragraph applies to an IBC, it applies in place of section 236.

15 Order declaring dissolution of former Act company void

(1) An application may be made to the Court for an order declaring the dissolution of a former Companies Act company or an IBC to which subparagraph (2) applies to be void.

(2) This paragraph applies, in place of section 238, if—

(a) in the case of a former Companies Act company, the company was struck off the former Companies Register and dissolved before the end of the transition period; or

(b) in the case of an IBC—

(i) the company was dissolved under the provisions of the International Business Companies Act (Cap. 11.13) before the end of the transition period, or

(ii) is deemed to be dissolved under paragraph 14.

(3) An application under subparagraph (1) —

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

(b) shall be made within ten years of the date that the company was dissolved; and

(c) may be made after the applicable re-registration date, or if the company has been struck off and dissolved before the applicable re-registration date, before that date.

(4) On an application under subparagraph (1), the Court may declare the dissolution of the company void, subject to such conditions as it considers just.

(5) If the Court makes an order under subparagraph (4)—

(a) the company is deemed never to have been struck off the former Companies Register or the IBC Register, as the case may be, or to have been dissolved; and

(b) if the order is made on or after the applicable re-registration date, the company is deemed to have been re-registered under paragraph 4(1).

(6) If the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of restoration and re-registration to the company in the approved form and the restoration has

effect from the date of the Court order or such other date as may be specified in the order.

16 Re-registration of struck off IBC

(1) An application may be made to the Registrar after the end of the transition period to re-register an IBC that was struck off the IBC Register before the end of the transition period but that—

(a) was not dissolved before the end of the transition; or

(b) is not deemed to be dissolved under paragraph 13 on the date of the application.

(2) An application under paragraph 15(1) may be made by the IBC or a creditor, member or liquidator of the IBC.

(3) On receipt of an application under paragraph 15(1), the Registrar may re-register the IBC and issue a certificate of re-registration if he is satisfied that—

(a) a licensed person has agreed to act as the registered agent of the IBC on its re-registration; and

(b) it would be fair and reasonable for the IBC to be re-registered.

(4) If the Registrar re-registers an IBC under paragraph 15(3), the IBC is deemed—

(a) never to have been struck off the IBC Register;

(b) to be restored to the IBC Register at the end of the transition period; and

(c) to have been re-registered under this Act at the end of the transition period in accordance with paragraph 4.

(5) If an IBC is restored and re-registered under this paragraph, paragraphs 5, 7, 8 and 9 apply, except that the time periods specified in paragraph 7(3) and (8) commence on the date that the Registrar re-registers the IBC and not the end of the transition period.

17 Struck off company liable for fees and penalties

(1) An IBC that is struck off the IBC Register shall remain liable for—

(a) all fees and penalties due under the International Business Companies Act; and

(b) such fees and penalties that would have been payable under this Act had the company been deemed to be re-registered under paragraph 4(1).

(2) The Court shall not make an order declaring the dissolution of an IBC void under paragraph 14, and the Registrar shall not re-register an IBC under paragraph 15, unless the following have been paid to the Registrar—

(a) all fees and penalties for which the company is liable under paragraph 16(1); and

(b) the prescribed restoration fee.

(3) The Court shall not make an order declaring the dissolution of a former Companies Act company void under paragraph 14 unless the following have been paid to the Registrar—

(a) all fees and penalties which the company would have been liable to pay under the Companies Act had it not been dissolved, during the period from the date that it was dissolved to the end of the transition period together with any fees and penalties outstanding at the date of its dissolution;

(b) such fees and penalties that would have been payable under this Act had the company been re-registered under paragraph 4(1); and

(c) the prescribed restoration fee.

18 Sections of this Act having effect

(1) Sections 237 and 240 of this Act apply to, and with respect to, an IBC that, at the end of the transition period, is struck off the IBC Register.

(2) Sections 241 and 242 of this Act apply to, and with respect to an IBC and its property if the company is struck off the IBC Register, as the case may be, before the end of the transition period but is dissolved in accordance with paragraph 13 on or after the end of the transition period.

(3) Any reference in section 237, 241 or 242 of this Act to "the Register" shall be taken as a reference to the IBC Register.

19 Effect of re-registration under this Act

(1) A former Act company that is re-registered under this Act, whether on application under paragraph 3 or under paragraph 4(1), continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not—

(a) prejudice or affect its identity;

(b) affect its assets, rights or obligations; or

(c) affect the commencement or continuation of proceedings by or against the company.

(2) A former Act company that is re-registered under this Schedule shall be subject to this Act except to the extent specified in this Schedule, to the extent that this Schedule is applicable to the company.

20 Seals of re-registered companies

If, immediately before its re-registration under this Schedule, a former Act company has a common seal, that common seal shall, for all purposes, be considered to be a valid common seal for the purposes of this Act.

21 External companies

An external company registered under Part 3, Division B of the Companies Act at the end of the transition period is deemed to be re-registered as a foreign company under Part 12 of this Act.

22 Registrar and Deputy and Assistant Registrars of Companies

The person holding office as Registrar of Companies or Deputy Registrar of Companies under the Companies Act, immediately before the date this Act comes into force, is deemed to have been appointed as Registrar of Companies or as Deputy Registrar of Companies in accordance with section 371(1) on the same terms as they were appointed under that Act.

23 References to companies in other enactments

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

SPEAKER

Passed by the Legislative Assembly this day of , 2023.

CLERK OF THE LEGISLATIVE ASSEMBLY