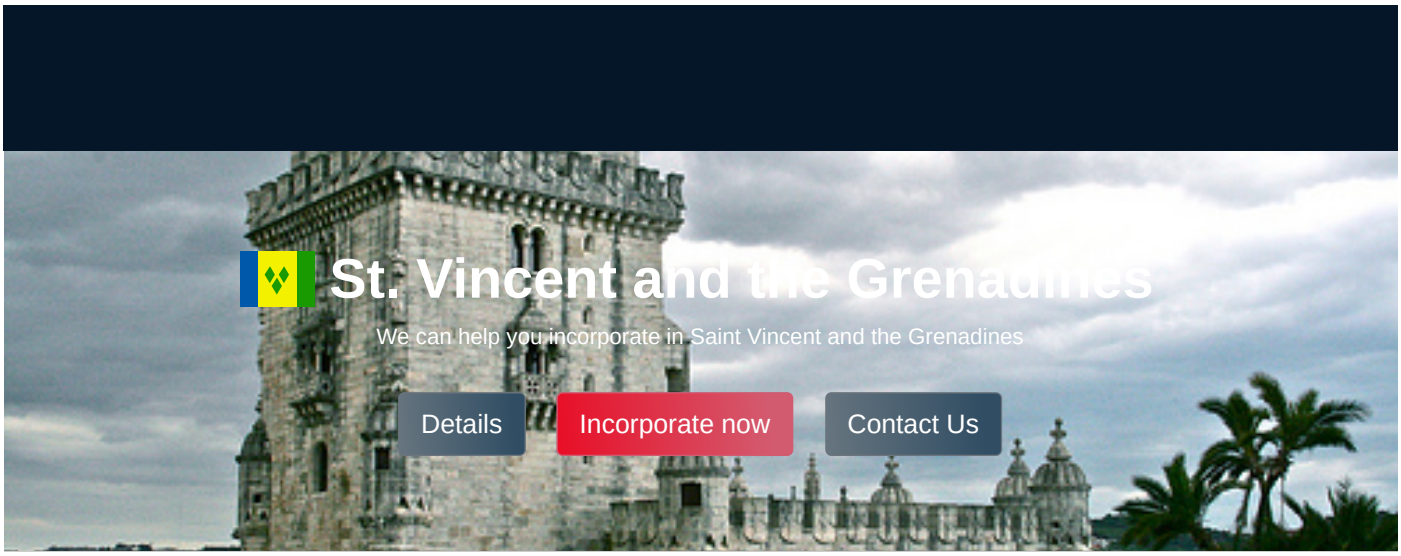
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St. Vincent And The Grenadines Companies Act

ST. VINCENT AND THE GRENADINES NO. 8 OF 1994 I ASSENT

AN ACT to revise and amend the law relating to companies and to provide for related and consequential matters.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same, as follows: -

Short title and Commencement

1. (1) This Act may be cited as the Companies Act, 1994.

(2) This Act shall come into operation on a date to be determined by the Governor General by notice in the Gazette and different days may be appointed for the coming into operation of different provisions of this Act.

(3) Subject to subsection (1) a reference to the commencement date shall be a reference to the commencement of the relevant provisions of this Act.

Preliminary

Interpretation

2. The provisions of section 543 shall apply for the purpose of interpreting the words and expressions set out therein and the other provisions of Division E of Part V shall apply for the purpose of this Act.

Commercial Enterprises

Application

3. Every association, partnership, society, or other body carrying on any trade or business for gain and consisting of more than twenty persons shall be incorporated under this Act unless formed under some other enactment.

PART I - FORMATION AND OPERATION OF COMPANIES

DIVISION A - INCORPORATION OF COMPANIES

Incorporation

4. (1) Subject to subsection (2), one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar and the name of every incorporator shall be entered in the company's register of members as soon as may be after the company's registration.

(2) No individual who.

(a) is less than 18 years of age;

(b) is of unsound mind and has been so found by a tribunal in St. Vincent and the Grenadines or elsewhere; or

(c) has the status of a bankrupt, shall form or join in the formation of a company under this Act.

(3) If articles of incorporation submitted to the Registrar are accompanied with a statutory declaration by an attorney-at-law that to the best of his knowledge and belief no signatory to the articles is an individual described in subsection (2), the declaration is, for the purposes of this Act, conclusive of the facts therein declared.

Formalities

5. (1) Articles of incorporation shall follow the prescribed form and set out, in respect of the proposed company,

(a) its proposed name;

(b) the classes and any maximum number of shares that the company is authorized to issue; and

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and

(ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

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

(d) the number of directors, or subject to paragraph (a) of section 71 the minimum and maximum number of directors;

(e) any restrictions on the business that the company may carry on.

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

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

Required Votes

6. (1) Subject to subsection (2), if the articles or any unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 73.

Documentation

7. An incorporator shall send to the Registrar with the articles of incorporation the documents required by subsection (1) of section 69, subsection (1) or section 176 and section 503.

Certification Of Incorporation

8. Upon receipt of articles of incorporation, the Registrar shall issue a certificate of incorporation in accordance with section 503, and the certificate is conclusive proof of he incorporation of the company named in the certificate.

Effective date

9. A company comes into existence on the date shown in its certificate o incorporation.

Corporate name

10. (1) The word “limited”, “corporation” or “incorporation” or the abbreviation “ltd.” or “inc.” shall be part of the name of every company; but a company may use and may be legally designed by either the full or the abbreviation form.

(2) The Registrar may exempt a boy corporate continued as a company under this Act from the requirements of subsection (1).

Reserved Name

11. A company shall not be incorporated with or have a name.

(a) That is prohibited or refused under sections 515 and 516; or

(2) That is reserved for another company or intended company under section 514.

Name Change

12. Where, through inadvertence or otherwise, a company.

(a) comes into existence with a name that contravenes section 11, or

(b) is, upon an application to change its name, granted a name that contravenes section 11.

The Registrar may direct the company to change its name in accordance with section 213.

Continued Name

13. Notwithstanding sections 11 and 12, a company that is continued with the name it lawfully had before that continuance.

Name Revocation

14. Where a company has been directed under section 12 to change its name and has not, within 60 days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Registrar may revoke the name of company and assign to it a name; and, until changed in accordance with section 213, the name of the company is thereafter the name so assigned.

Assigned Name

15. (1) when a company has had its name revoked and a name assigned to it under section 14, the Registrar shall issue a certificate of amendment showing the new name of company and shall forthwith give notice of the change in the Gazette.

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

Pre-Incorporation Agreements

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

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

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

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

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

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the company is adopted by the company, a party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the 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) If expressly so provided in the written contract, a person who purported to act for or on behalf of a company before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

DIVISION B - CORPORATE CAPACITY AND POWERS

Capacity And powers

17. (1) A company has the capacity, and subject to this Act, the rights, powers and privileges of an individual.

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

(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 authorize any company to carrying on of the 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.

Powers Reduced

18. (1) A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles.

(2) A company shall not commence business before it has made an alottment of shares.

Validity Of acts

19. For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles.

Notice not Presumed

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

No disclaimer Allowed

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

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

(b) that the persons named in the most recent notice to the Registrar under section 69 or 77 are not the directors of the company;

(c) that the place named in the most recent notice sent to the Registrar under section 176 is not the registered office of the company;

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

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

(f) that the financial assistance referred to in section 53 or the sale, lease, or exchange of property referred to in section 136 was not authorized; except where that person has, or ought to have by virtue of his positive with a relationship to the company, knowledge to the contrary.

Contracts of A company

22. (1) A contract made according to this section on behalf of a company.

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

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

(2) A contract that, if mad between individuals, would, by law, be required to be in writing under seal may be made on behalf of a company in writing under seal.

(3) A contract that, if made between individuals, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the company.

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

Bill & Notes

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

Power of attorney

24. (1) A company may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place within or outside St. Vincent and the Grenadines.

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

Company Seals

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

(2) If authorized by its by-laws, a company may have for use in any country other than St. Vincent and the Grenadines or for use in any district or place not situated in St. Vincent and the Grenadines an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

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

(4) A company may, by an instrument in writing under its common seal, under its common seal, authorize any person appointed for that 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.

(5) Any persons dealing with an agent appointed pursuant to subsection (4) 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 so mentioned, until that person has actual notice of the revocation or determination of the authority.

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

DIVISION C - SHARE CAPITAL

Shares

Nature of Shares

26. (1) Shares in a company are personal estate and are not of the nature of real estate; and a share is transferable in the number provided by this Act.

(2) Shares in a company agree to be without nominal or par value.

(3) When a former-Act company is continued under this Act, a share with nominal or par value issued by the company before it was so continued is, for the purposes of subsection (2), deemed to be a share without nominal or par value.

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

(5) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, non of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued, or, as the case may be, all the shares for the time being issued of the particular class.

If only One class

27. When a company has only one class of shares, the rights of the holders are equal in all respect, and include

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

(b) the right to receive any dividend declared by the company.

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

Share Classes

28. The articles of a company may provide for more than one class of shares; and, if they so provide,

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

(b) the rights set out in section 27 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.

Share issue

29. (1) Subject to the articles, the by-laws, any unanimous shareholder agreement, and section 34 shares may be issued at such times, and to such persons, and for such consideration, as the directors may determined.

(2) No company may issue bearer shares or bearer share certificate.

Consideration

30. (1) A share shall not be issued until it is fully paid.

(a) in money, or

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

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

(3) For the purposes of this section, “property” does not include a promissory not or a promise to pay.

Stated Capital Accounts

31. (1) A company shall maintain a separate stated capital account for each class and series of shares that it issues.

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

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

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

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account shall be approved by special resolution if

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

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

(6) Notwithstanding section 30 and subsection (2),

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

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

(ii) to a person who controlled the company immediately before the exchange, the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

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

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

(7) When a former-act company is continued under this Act,

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

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

(c) its stated capital account for the purposes of

(i) subsection (2) of section 39,

(ii) section 44,

(iii) paragraph (b) of subsection (2) of section 53, and

(iv) paragraph (a) of subsection (2) of section 224, includes the amount that would have been included in stated capital if the company had been incorporated under this Act.

Open-Ended Mutual Company

32. Section 31 and any other provision of this Act relating to stated capital do not apply to a company (a) that is a public company,

(b) that carries on only the business of investing the consideration it receives for the shares it issues, and

(c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders.

Series shares

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

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

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

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

(5) Upon receipt from a company of articles of amendment designating a series of shares, the Registrar shall issue to the company a certificate of amendment in accordance with section 503.

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

Pre-emptive Rights

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

(2) Notwithstanding that the articles of a company provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company.

(a) for a consideration other than money;

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

Conversion Privileges

35. (1) A company may grant conversion privileges, options or rights to acquire shares of the company, but shall set out the conditions thereof in any certificates or other instruments issued in respect thereof.

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

Reserve Shares

36. Where a company (a) has granted privileges to convert any debentures or shares issued by the company into shares or into shares of another class or series of shares, or

(c) has issued or granted options or rights to acquire shares, if the articles of the company limit the number of authorized shares, the company shall reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privilege, options and rights.

Own shares

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

(2) A company shall cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within 5 years from the date, as the case requires,

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

(b) that the company was continued under this Act.

Exemptions

38. (1) A company may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it, or the holding body corporate, or a subsidiary of either of them has a beneficial interest in the shares.

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

Acquisition Of Own Shares

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

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

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

(b) The realizable value of the company's assets would, after that payment, be less than the aggregate of is liabilities and stated capital of all classes.

Other Acquisition

40. (1) Notwithstanding subsection (2) of section 45, but subject to subsection (3) and to its articles, a company may purchase or otherwise acquire its own issued shares.

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

(b) to eliminate fractional shares; or

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

(2) Notwithstanding subsection (2) of section 39, a company may purchase or otherwise acquire its own issued shares

(a) to satisfy the claim of a shareholder who dissents under section 226, or

(b) to comply with an order under section 241.

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

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

(b) the realisable values of the company's assets would, after that payment, be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

Redeemable Shares

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

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

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

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

(i) its liabilities, and

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

Donated Shares

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

Voting Thereon

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

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

(b) has complied with section 146.

Stated Capital Reduction**

44. (1) Subject to subsection (3), a company may by special resolution reduce its stated capital by

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

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

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

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

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

(a) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due, or (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section shall not later than 30 das after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

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

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

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

(6) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the act a complained of.

(7) This section does not affect any liability that arises under section 85 or 86.

Stated Capital Adjustment

45. (1) Upon a purchase, redemption or other acquisition by a company under section 39, 40, 41, 57 or 226 paragraph (f) of subsection (3) of section 241, of shares or fractions thereof issued by it, the company shall deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall deduct the amount of a payment made by the company to a shareholder under paragraph (g) of subsection 241 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

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

(4) Upon a conversion of issued shares of a class into shares of another class, or upon a change under section 213, 236 or 241 of issued shares of a company into shares of another class or series, the company shall.

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

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

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

Cancellation Of shares

46. Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company shall be cancelled, or, if the articles of the company limit the number of authorized shares, the shares or fractions may be restored to the status of authorized, but unissued, shares.

Presumption Re own Shares

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

Changing Share Class

48. (1) Shares issued by a company and converted or changed under section 213, 236 or 241 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

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

Effect of Purchase Contract

49. (1) A contract with a company providing for the purchase of shares of the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 39 or 40.

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of the contract is prevented by section 39 or 40.

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

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

(b) to be ranking in a winding up subordinate to the rights of creditors but in priority to the shareholders.

Commission For share Purchase

50. The directors of a company acting honestly and in good faith with a view to the best interests of the company may authorize the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares.

Prohibited Dividend

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

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

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

Payment of Dividend

52. Subject to subsection (2) a company may pay a dividend in money, in property, or by issuing fully paid shares of the company.

(2) A company shall not pay a dividend in money or in property out of unrealized profits.

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

Illicit loans By company

53. (1) When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, except as permitted by section 54, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise,

(a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purpose, or

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

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that

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

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

Permitted Loans

54. Notwithstanding section 53, a company may give financial assistance to any person by means of a loan, guarantee or otherwise

(a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company.

(b) On account of expenditures incurred or to be incurred on behalf of the company;

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

(d) To a subsidiary body corporate of the company;

(e) To employees of the company or any of its affiliates; and

(f) To shareholders of the company

(i) to enable or assist them to purchase or erect living accommodation for their own occupation.

(ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or

(iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

Enforcement of Illicit loans

55. A contract made by a company contrary to section 53 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Immunity Of shareholders

56. The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under subsection (5) of section 44 or subsection (2) of section 135.

Lien on Shares

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

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

DIVISION D - MANAGEMENT OF COMPANIES

Duty of Directors to Manage Company

58. Subject to any unanimous shareholder agreement, the directors of a company shall (a) exercise the powers of the company directly or indirectly, through the employees and agents of the company, and

(b) direct the management of he business and affairs of the company.

Secretary

59. (1) Every company shall have a secretary and may have one or more assistant secretaries, who, or each of whom

(a) shall be appointed by the director or directors, or if provision is made in the by-laws of a company for the appointment, in accordance with that provision; and

(b) may be an individual, a corporation or a firm.

(2) If a company carries on business for more than one month without complying with subsection (1) the company and every officer of the company who is in default is guilty of an offence.

Acts of Secretary etc.

60. (1) Anything required or authorized to be done by or in relation to the secretary, may, if the office is vacant, or if for any other reason the secretary is not capable of acting, be done by or in relation to any assistance secretary or, if there is no assistance capable of acting, by or in relation to any officer of the company authorized generally or specially in that behalf by the director or directors of the company.

(2) A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of the secretary.

Secretary of Public Company

61.* **(1)** The directors of a public company shall take all reasonable steps to ensure that each secretary and assistance secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(2) 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 3 years of the 5 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 St. Vincent and the Grenadines , the Institute of Character Secretary and Administrators or the Chartered Institute of Public Finance and Accountancy.

(d) Who is an attorney-at-law, or

(e) Who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company.

May be assumed to be a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary or assistant secretary of a public company, if the director does not know otherwise.

Number of Directors

62. (1) A company must have at least one director but a public company shall share no fewer than three directors, at least 2 of whom are not officers or employees of the company or nay of its affiliates.

(2) Only an individual may be a director of a public company.

Restricted Powers

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

By-law Powers

64. (1) Unless the articles, by-laws, or unanimous shareholder agreement otherwise provides, the directors of a company may be resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company.

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

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

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

(b) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4); and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

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

(6) A shareholder who is entitled to vote at an annual meeting or shareholders may, in accordance with sections 114 to 122, make a proposal to make, amend or repeal a by-law.

Organizational Meeting

65. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company, a meeting of the directors of the company shall be held at which 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) authorize the issue of shares;

(d) appoint officers;

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

(f) make banking arrangements; and

(g) transact any other business.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post not less than 7 clear days notice of the meeting to each director and stating in the notice the times and place of the meeting.

(3) Subsection (1) does not apply to a company to which a certificate of amalgamation has been issued under section 225.

Disqualified Directors

66. (1) An individual who is prohibited by subsection (2) of section 4 from forming or joining in the formation of a company may not be a director of any company.

(2) When an individual is disqualified under section 67 from being a director of a company, that individual may not, during tat period of disqualification, be a director of any company.

Court disqualified Directors

67. (1) When, on the application of the Registrar, it is made to appear to the court that an individual is unfit to be concerned in the management of a public company, the court may order that, without the prior leave o the court, he 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 5 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 St. Vincent and the Grenadines 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 10 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 public 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.

No qualification Required

68. Unless the articles of a company otherwise provide, a director of the company need not hold shares issued by the company.

Notice of directors

69. (1) At the time of sending articles of incorporation of a company to the Registrar, the incorporators shall send him, in the prescribed form, a notice of the names of the directors of the company; and the Registrar shall file the notice.

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

(3) Subject to paragraph (b) of section 71, the shareholders of a company, shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

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

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

(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(7) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the company, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.

(8) The articles of a company or an unanimous shareholder agreement may, for terms expiring not the shareholders following the election, provide for the election or appointment of directors by the creditors or employees of the company or by any classes of these creditors or employees.

Alternate Directors

70. (1) A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director in the alternative to a director of the company, or may authorize the directors to appoint such alternative directors as are necessary for the proper discharge of the affairs of the company.

(2) An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

Cumulative Voting

71. Where the articles of a company provide for cumulative voting, the following rules apply:

(a) the articles shall require a fixed number, and not a minimum and maximum number of directors;

(b) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his votes in favor of one candidate, or distribute them among the candidate, or distribute them among the candidates in any manner;

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;

(d) if a shareholder votes for more than one candidate without specifically the distribution of his votes among the candidates, he distributes his votes equally among the candidates for whom he votes;

(e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

(f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;

(g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and

(h) the number of directors required by the articles may not decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Termination of office

72. (1) A director of a company ceases to hold office when

(a) he dies or resigns,

(b) he is removed in accordance with section 73,

(c) he becomes disqualified under section 66 or 67.

(2) The resignation of a director of a company becomes effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

Removal of directors

73. (1) Subject to paragraph (g) of section 71, the shareholders of a company may

(a) by ordinary resolution at a special meeting, remove any director from office.

(b) Where a director was elected for a term exceeding one year and is not up for re-election at an annual meeting, remove such director by ordinary resolution at the meeting.

(2) Where the holders of any class or series 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 or series of shares.

(3) Subject to paragraph (b) to (e) of section 71, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 75.

Right to Notice

74. (1) A director of a company is entitled to received notice of, and to attend and be heard at,

(2) A director

(a) who resigns,

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

(c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire, may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

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

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

Filling Vacancy

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

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

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

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

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

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

(a) by a vote of the shareholders, or

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

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

Numbers Changed

76. The shareholders of a company may amend the articles of the company to increase or, subject to paragraph (h) of section 71 to decrease, the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of the incumbent director.

Notice of Change

77. (1) Within 15 days after a change is made among its directors, a company shall send to t he Registrar a notice in the prescribed form setting out the change; and the Registrar shall file the notice.

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

Directors' Meetings

78. (1) Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the by-laws require.

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

Notice and Waiver

79. (1) A notice of a meeting of the directors of a company shall specify any matter referred to in at the meeting; but unless by-laws of the company otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

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

Adjourned Meeting

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

Telephone Participation

81. (1) Subject to the by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

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

Delegation Of powers

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

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

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

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

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

(d) declare dividends;

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

(f) pay a commission referred to in section 50;

(g) approve a management proxy circular referred to in Division F;

(h) approve any financial statements referred to in section 149; or

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

Validity of Acts

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

Resolution

In writing. 84. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors,

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

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

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

Liabilities of Directors

Liability for Share issue

85. Directors of a company who vote for or consent to a resolution authorizing the issue of a share under section 29 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

Liability for Other acts

86. Directors of a company who vote for, or consent to, a resolution authorizing;

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

(b) a commission contrary to section 50;

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

(d) financial assistance contrary to section 53;

(e) a payment of an indemnity contrary to any of the provisions of sections 226 to 235 or 241, are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

Contribution For judgment

87. A director who has satisfied a judgment founded on a liability under section 85 or 86 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Recovery By action

88. (1) A director who is liable under section 86 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 39, 40, 41, 50, 51, 52, 53 or 54.

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

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of section 39, 40, 41, 50, 51, 52, 53, 54, 99 to 103, 226 to 235 or 241,

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

(c) make any further order it thinks fit.

Defence to Liability

89. A director of a company is not liable under section 85 if he did not know and could not reasonably have known that the share was issued for a consideration less thatn fair equivalent of the money that the company would have received if the share had been issued for money.

Time limit On liability

90. An action enforce a liability imposed under section 85 or 86 may not be commenced after 2 years from the date of the resolution authorizing the action complained of.

Contractual Interest

Interests in Contracts

91. (1) A director or officer of a company

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

(b) who is a director or an officer of any body, or has a material contract or proposed material contract with the company, shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

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

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

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

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

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

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

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

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

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

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

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

(a) is an arrangement by way of security for money loaned to, or obligations undertaken by him, for the benefit of the company or an affiliate of the company.

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

(c) Is a contract for indemnity or insurance under section 99 to 103;

(d) Is a contract with an affiliate of the company; or

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

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

Interest Declaration

92. For the purposes of section 91, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract.

Avoidance of Nullity

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

(a) by reason only of that relationship, or

(b) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorized the contract.

If the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 91 or section 92, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

Setting Aside contract

94. When a director or officer of a company fails to disclose, in accordance with section 91 or 92, his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

Officers of the Company Designation of Officers, etc.

95. Subject to this Act and to the articles or by-laws of a company or any unanimous shareholder agreement,

(a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in subsection (2) of section 82;

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

(c) 2 or more offices of the company may be held by the same person.

Borrowing Powers of Directors Borrowing Powers

96. (1) Unless the articles or by-laws of, or any unanimous shareholder agreement relating to, the company otherwise provide, the directors of the company may, without authorization of the shareholders,

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

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

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

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

(2) Notwithstanding subsection (2) of section 82 and paragraph (a) of section 95, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may be resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or any officer of the company.

Duty of Directors and Officers Duty of Care

97. (1) Every director and officer of a company in exercising his powers and discharging his duties shall

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

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

(2) In determining what are the best interests of a company, a director shall have regard to the interests of the company's employees in general as well as to the interests of its shareholders.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) No information about the business or affairs of a company shall be disclosed by a director or officer of the company except;

(a) for the purposes of the exercise or performance of his functions as a director or officer;

(b) for the purposes of any legal proceedings;

(c) pursuant to the requirements of any enactment, or

(d) when authorized by the company.

(5) Every director and officer of a company shall comply with this Act and the regulation, and with the articles and by-laws of the company, and any unanimous shareholder agreement relating to the company.

(6) Subject to subsection (2) of section 135, no provision in a contract, the articles of a company, it's by-laws or any resolution, relieves a director or officer of the company from the duty to act in accordance with this Act or the regulations, or relieves him from liability for a breach of this Act or the regulations.

Dissenting to resolutions

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

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

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

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

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

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within 7 days after he becomes aware of the resolution, he

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

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

(4) A director is not liable under section 85, 86 or 97 if he relies in good faith upon

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

(b) a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnities Indemnifying Directors, etc.

99. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favor, a company may indemnify

(a) a director or officer of the company,

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

(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor and his legal representatives, against all cost, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

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

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

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

For derivative Action

100. A company may with the approval of the court indemnify a person referred to in section 99 in respect of an action.

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

(b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate, against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfills the conditions set out in subsection (2) of section 99.

Right to Indemnity

101. Notwithstanding anything in section 99 or 100, a person described in section 99 is entitled to indemnity from the company in respect of all costs, charged and expenses reasonably incurred by him in connection with the defense of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity

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

(b) qualified in accordance with the standards set out in section 99 or 100, and

(c) is fairly and reasonably entitled to indemnity.

Insurance of Directors, etc.

102. A company may purchase and maintain insurance for the benefit of any person referred to in section 99 against any liability incurred by him under paragraph (b) of subsection (1) of section 97 in his capacity as a director or officer of the company.

Court Approval of Indemnity

103. (1) A company or person referred to in section 99 may apply to the court for an order approving an indemnity under section 100 or 101; and the court may so order and make any so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

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

Remuneration

104. Subject to its articles or by-laws, or any unanimous shareholder agreement; the directors of a company may fix the remuneration of the directors, officers and employees of the company.

DIVISION E - SHAREHOLDERS OF COMPANIES

Shareholders And their

Meetings

105. (1) The following persons are shareholders in a company, and namely –

(a) a person who is a member of the company under subsection (3) of section 371;

(b) the personal representative of a deceased shareholder and the trustee in bankrupt.

(c) a person in whose favor a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if two or more such transfers have been executed, the person in whose favor the most recent transfer has been made.

(2) In this Act any reference to holders of shares is a reference to persons who are shareholders in respect of the shares

(3) For the purposes of this Act shares shall be considered as having been issued if any person is a shareholder in respect of them.

(4) Meetings of shareholders of a company shall be held at the place within St. Vincent and the Grenadines provided in the by-laws, or, in the absence of any such provision, at the place within St. Vincent and the Grenadines that the directors determine.

(5) Notwithstanding subsection (4), a meeting of shareholders of a company may be held outside St. Vincent and the Grenadines if all the shareholders entitled to vote at the meeting so agree.

(6) A shareholder who attends a meeting of shareholders held outside St. Vincent and the Grenadines agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Meeting Outside St. Vincent And the Grenadines

106. Notwithstanding section 105, if the articles of a company so provide, meetings of shareholders of the company may be held outside St. Vincent and the Grenadines at one or more places specified in the articles.

Calling Meetings

107. The directors of a company

(a) shall call an annual meeting of shareholder not later than 18 months after the company comes into existence, and subsequently not later than 15 months after holding the last preceding annual meeting; and

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

Record date Of shareholders

108. (1) For the purpose of

(a) determining the shareholders of the company who are

(i) entitled to receive payment of a dividend, or

(ii) entitled to participate in a winding-up distribution, or

(b) determining the shareholders of the company for any other purpose except the right to receive notice of, or to vote at, a meeting, the directors may fix in advance a date as the record date for the determination of shareholders; but that record date shall not precede by more than 30 days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders; but the record date shall not precede by more than 30 days or by less than 7 days the date on which the meeting is to be held.

Statutory Date

109. If no record date is fixed,

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

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

(ii) if no notice is given, the day on which the meeting is held; and

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

Notice of Record date

110. If a record date is fixed under section 108 notice thereof shall, in the case of a public company, be given advertisement in a newspaper published in St. Vincent and the Grenadines not less than 7 days before the date so fixed.

Notice of Meetings

111. (1) Notice of the time and place of a meeting of shareholders shall be sent not less than 7 days nor more than 30 days before the meeting

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

(b) to each director; and

(c) to the auditor of the company.

(2) A notice of a meeting of shareholders of a company is not required to be sent to shareholders of the company who were not registered on the records of the company or its transfer agent on the record date determined under section 108 or 109. As the case may be; but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more, notice of the adjourned meeting shall be given as for an original meeting; but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, subsection (1) of section 141 does not apply.

Special Delivery

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

(a) the consideration of the financial statements,

(b) the directors' report, if any

(c) the auditor's report, if any

(d) the sanction of dividends,

(e) the election of directors, and

(f) the re-appointment of the incumbent auditor.

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

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

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

Shareholder Meeting; Waiver of notice and Telephone Participation

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

(2) Subject to the by-laws of a company, a shareholder may, if all the shareholders of the company consent, participate in a meeting of shareholders of the company by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

(3) A shareholder who participates in a meeting of shareholders by such means as are described in subsection (2) is, for the purposes of this Act, present at the meeting.

Proposals and Proxies “Proposals” of shareholders

114. A shareholder of a company who is entitled to vote at an annual meeting of the shareholder may

(a) submit to the company notice of any matter that he proposes to raise at the meeting in this Division referred to as a “proposal”, and

(b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

Proxy Circular

115. (1) A company that solicits proxies shall set the proposal out in the management proxy circular required by section 141 or attach the proposal to that circular.

(2) If so requested by a shareholder who submits a proposal to a company, the company shall include in the management proxy circular, or attach to it, a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

Nomination In proposal

116. A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares who represent in the aggregate not less than

(a) 5 percent of the shares of the company, or

(b) 5 percent of the shares of a class of shares of the company.

Entitled to vote at a meeting to which the proposal is to be presented; but his subsection does not preclude nominations made at a meeting of shareholders of a company that is not required to solicit proxies under section 141.

Non- compliance With proxy Solicitation

117. A company is not required to comply with subsection (2) of section 115 if

(a) the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of shareholders of the company;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers, shareholders or debenture holders or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(c) the company, at the shareholder’s request, included a proposal in a management proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of that request and the shareholder failed to present the proposal, in person or by proxy, at the meeting.

(d) Substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident’s proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the shareholder’s request and the proposal was defeated; or

(e) The rights conferred by that subsection are being abused to secure publicity.

Publishing Immunity

118. No company, or person acting on its behalf, incurs any liability by reason only of circulating a proposal or statement in compliance with this Act.

Refusal Notice

119. When a company refuses to include a proposal in a management proxy circular, the company shall, within 10 days after receiving the proposal, notify the shareholders submitting the proposal of its intention to omit the proposal from the management proxy circular; and the company shall send him a statement of the reasons for its refusal.

Restraining Meeting

120. Upon application to the court by a shareholder of a company who is claiming to be aggrieved by the company’s refusal under section 119 to include a proposal in a management proxy circular, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Right to Omit proposal

121. A company or any person claiming to be aggrieved by a proposal submitted to the company may apply to the court for an order permitting the company to omit the proposal from its management proxy circular; and the court may, if it is satisfied that section 117 applies, make such order as it thinks fit.

Registrar’s Notice

122. An applicant under section 120 or 121 shall give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law.

Shareholder Lists List of Shareholders

123. (1) A company shall

(a) not later than 10 days after the record date is fixed under subsection (2) of section 108, if a record date is so fixed, or (b) if no record date is fixed,

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

(ii) if no notice is given, as of the day on which the meeting is held, prepare a list of its shareholders who are entitled to receive notice of a meeting. Arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under subsection (2) of section 108, a person named in the list prepared under paragraph (a) of subsection (1) is, subject to subsection (3) entitled, at the meeting to which the list relates to vote the shares shows opposite his name.

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

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

(b) demands, not later than 10 days before the meeting of the shareholders of the company, that his name be included in the list of shareholders before the meeting, the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under subsection (2) of section 108, a person named in a list of shareholders prepared under paragraph (b) of subsection (1) may, at the meeting to which the list relates, vote the shares shown opposite his name.

Examination Of list

124. A shareholder of a company may examine the list of its shareholders

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

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

Quorum

Quorum at Meetings

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

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

(3) If a quorum is not present within 30 minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day 2 weeks thereafter, at the same time and place; and, if at the adjourned meeting, a quorum is not present within 30 minutes of the appointed time, the shareholders present constitute a quorum.

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

Voting the Shares

Right to Vote share

126. Unless the articles of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote; and upon a poll a shareholder or proxy holder has one vote for every share held.

Representative Of other body

127. (1) When a body corporate or association is a shareholder of a company, the company shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorized as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

Joint share Holders

128. Unless the by-laws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if 2 or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

Voting method At meetings

129. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by a show of hands, except when a poll is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a poll either before or after any vote by show of hands.

Resolution In writing

130. (1) Except where a written statement is submitted by a director under section 74 or an auditor under section 170,

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

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

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of he meetings of shareholders but failure so to keep such copy does not render void any action taken by the company.

Requisitioned Shareholders Meetings

131. (1) The holders of not less than 5 percent of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

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

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

(a) a record date has been fixed under subsection (2) of section 108 and notice thereof has been given under section 110;

(b) the directors have called a meeting of shareholders and, have given notice thereof under section 111; or

(c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 117.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within 21 days after receiving the requisition, any shareholder who signed the requisition may call the meeting.

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

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the company shall reimburse the shareholders who requisitioned the meeting the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Court-calling Meeting

132. (1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may,

(a) when for any reason it is impracticable (i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or

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

(b) when the directors fail to call a meeting of the shareholders in contravention of section 131, or

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

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

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

Controverted Affairs Court review Controversy

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

(2) Upon an application made under this section, the court may make any order it thinks fit including,

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

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

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

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

Shareholder Agreements Pooling Agreement

134. 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.

Unanimous Shareholder Agreement

135. (1) An otherwise lawful written agreement among all he 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) Where 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 15 days after the execution or termination.

Shareholder Approvals Extra-ordinary Transaction

136. (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 shareholder in accordance with this section.

(2) A notice of a meeting of shareholders complying with section 111 shall be sent in accordance with that section to each shareholder 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 shareholder is entitled to be paid the fair value of his shares in accordance with section 226; but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in section (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorize the sale, lease or exchange of the property, and may fix or authorize 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 shareholders of a class or series of shares of the company or entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

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

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

DIVISION F - PROXIES

Definitions

137. (1) In this Part,

“form of proxy” means a written or printed form that, upon completion and signature by or on behalf of a shareholder, becomes a proxy;

“proxy” means a completed and signed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on his behalf at a meeting of shareholders;

“registrant” means a broker or dealer required to be registered to trade or

deal in shares or debentures under the law of any jurisdiction;

“solicit” or “solicitation” includes, subject to subsection (2),

(a) a request for a proxy, whether or not accomplished with or included in a form of proxy;

(b) a request to execute or not to execute a form of proxy or to revoke a proxy; and

(c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy;

“solicitation by or on behalf of the management of a company” means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors of the company concerned.

(2) The term “solicit” or “solicitation” does not include.

(a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder;

(b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(c) the sending by a registrant of the documents referred to in section 146; or

(d) a solicitation by a person in respect of shares of which he is the beneficial owner.

Proxy Holders

Proxy

Appointment

138. (1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder, or one or more alternate proxy holders, none of whom need be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed in writing by the shareholder or his attorney authorized in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

Revocation of Proxy

139. A shareholder of a company may revoke a proxy

(a) by depositing an instrument in writing executed by him or by his attorney authorized in writing,

(i) at the registered office of the company at any time, up to an including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting, or

(b) in any other manner permitted by law.

Deposit Of proxy

140. (1) The directors of a company may specify in a notice calling a meeting of the shareholders of the company a time not exceeding 48 hours preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting shall be deposited with the company or its agent.

(2) In the calculation of time for the purposes of subsection (1), Saturday s and holidays are to be excluded.

Mandatory Solicitation Of proxy

141. (1) Subject to subsection (2), the management of a company shall, concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) Where a company has fewer than 15 shareholders, 2 or more joint shareholders being counted as one, the management of the company need not send a form of proxy under subsection (1).

Prohibited Solicitation

142. A person shall not solicit proxies unless there is sent to the auditor of the company, to each shareholder whose proxy is solicited and to the company if the solicitation is not by or on behalf of the management of the company.

(a) a management proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by or on behalf of the management of the company; or

(b) a dissident’s proxy solicitation, in the prescribed form stating the purpose of the solicitation, when the solicitation is not by or on behalf of the management of the company.

Documents For Registrar

143. A person required to send a management proxy circular or dissident’s proxy circular shall concurrently send a copy thereof to the Registrar, together with a copy of the notice to the meeting, form of proxy and any other documents for use in connection with the meeting.

Exemption By Registrar

144. Upon the application of an interested person, the Registrar may, on such terms as he thinks fit, exempt that person from any of the requirements of section 141 or 142, and the exemption may be given retroactive effect by the Registrar.

Proxy Attending Meeting

145. (1) A person who solicits a proxy and is appointed proxy holder shall

(a) attend in person, or cause an alternate proxy holder to attend, the meeting in respect of which the proxy is given, and

(b) comply with the directions of the shareholder who appointed him.

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

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

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

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

Share Registrants Registrant’s Duty

146. (1) Shares of a company that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant may not be voted unless the registrant forthwith after the receipt thereof sends to the beneficial owner

(a) a copy of the notice of the meeting, financial statements, management proxy circular and any other documents sent to shareholder by or on behalf of any person for use in connection with the meeting, other than the form of proxy, and

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

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

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person’s expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

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

(5) If requested by a beneficial owner of shares of a company, the registrant of those shares shall appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

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

Governing Prohibiting

147. Nothing in section 146 gives registrants the right to vote shares that he is otherwise prohibited from voting.

Remedial Powers Restraining Order

148. (1) If a form of proxy, management proxy circular or dissident’s proxy circular

(a) contains an untrue statement of a material fact, or

(b) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, an interested person or the Registrar may apply to the court.

(2) On an application under this section the court may make any order it thinks fit, including any or all of the following orders:

(a) an order restraining the solicitation or the holding of the meeting or restraining any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;

(b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; or

(c) an order adjourning the meeting.

(3) An applicant under this section other than the Registrar shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

DIVISION G - FINANCIAL DISCLOSURE

Comparative Financial Statements Annual financial returns

149. (1) Subject to this section and to section 150, the directors of a company shall place before the shareholders at every annual meeting of the shareholders of the company:

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

(i) the period that began on the date the company came into existence and ended not more than 12 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 12 months after the beginning of that period, and

(ii) the immediately preceding financial year;

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

(c) any further information respecting the financial position of the 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 sub-paragraph (ii) of paragraph

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

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

Exemption For information

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

Consolidated Financial returns

151. (1) A company shall keep at its registrered office a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated in the financial statements of the company.

(2) Shareholders of a company and their agents and legal representatives may, upon request therefore, 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 company may, within 15 days of a request to examine statements under subsequent (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 body corporate, bar that right and make any further order the court thinks fit.

(4) A 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.

Approval of Directors

152. (1) The directors of a company shall approve the financial statements referred to in section 149, and the approval shall be evidenced by the signature of 1 or more directors.

(2) A company shall not issue, publish or circulate copies of the financial statements referred to in section 149 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, if any.

Copies of documents To be sent To shareholders

153. (1) Not less than 21 days before each annual meeting of the shareholders of a company or before the signing of a resolution under para-graph (b) of subsection (1) of section 130 in lieu of its annual meeting, the company shall send a copy of the documents referred to in section 149 to each shareholder, except a shareholder who has informed the company in writing that he does not want a copy of those documents.

(2) Notwithstanding subsection (1), a public company whose shares, or any class of whose shares, are listed need not, in such cases as may be prescribed and provided any prescribed conditions are complied with, send copies of he documents referred to in section 149 to shareholders 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 director's 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 f 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;

Registrar's copies

154. (1) A company

(a) that is a public company, or

(b) the gross revenue of which, as shown in the most recent financial statements referred to in section 149, exceed $4 000 000 or the assets of which as shown in those financial statements exceed $2 000 000, or such greater amounts as may be prescribed,

shall send a copy of the documents referred to in section 149 to the Registrar, not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph

(b) of subsection (1) of section 130 in lieu of the annual meeting, and in any event not later than 15 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) For the purposes of paragraph (b) of subsection (1), the gross revenues and assets of a company include the gross revenues and assets of its affiliates.

(3) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.

(4) If a company referred to in subsection (1)

(a) sends interim financial statements or related documents to its shareholders, or

(b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognized stock exchange, the company shall forthwith send copies thereof to comply Registrar.

(5) 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

Declaration of solvency

155. (1) Subject to this section, a company that is not pursuant to subsection (1) of section 154 required to send to the Registrar a copy of the documents referred to in section 149, shall within the period specified in the said subsection send to the Registrar.

(a) a certificate of solvency signed by at least one director on behalf of the board and by the auditor, if any, containing the statements and opinions required by subsection (2) made with reference to the company's assets and liabilities at the date on which the financial statements of the company laid before the annual general meeting or, as the case may be, of the signing of a resolution under paragraph (b) of subsection (1) of section 130 in lieu of the annual meeting, and

(b) a certificate signed by at least one director on behalf of the board and by the auditor, if any, that the certificate referred to in paragraph (a) agrees with the balance sheet and profit and loss account which form part of the financial statements.

(2) A certificate of solvency shall state

(a) the amounts shown in the company's balance sheet as the total values respectively of the company's fixed assets, current assets investments and other assets;

(b) the amount shown in the company's balance sheet as the total amount of the company's debt and liabilities, accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out and the amount so shown as the total amount of the company's other debts and liabilities; and

(c) whether in the opinion of the auditor, or if there is no auditor, of each director, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.

(3) If the auditor of a company refuses to give or sign either of the certificates mentioned in subsection (2), a not of his refusal shall be endorsed on the certificate.

(4) A director or auditor of a company who signs or sends to the Registrar or concurs in the sending to the Registrar 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, is guilty of an offence.

(5) It is a sufficient defense if the person charged with an offence under this section proves that up to the time of the sending to the Registrar of the certificate he believed on reasonable grounds that this section had been compiled with.

(6) A company that is not required to comply with section 154 by virtue of subsection (5) of that section, is not required to comply with this section.

Audit Committee

Audit Committee

156. (1) Subject to subsection (2) a public company shall, and any other company may, have an audit committee composed of 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 company may apply to the Registrar for an order authorising the company to dispense with an audit committee, and the Registrar may, if he is satisfied that the shareholders will not prejudiced by such an order, permit the company to dispense with an audit committee on such reasonable conditions as he thinks fit.

(3) An audit committee shall review the financial statements of the company before such financial statements are approved under section 152.

(4) The auditor of a company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard thereat; 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.

(5) The auditor of a company or a member of the audit committee may call a meeting of the committee.

Company Auditor – Qualifications, Appointment and Functions

Purposes of Sections

158 to 161. 157 In accordance with the provision of sections 158 to 161 only persons who are properly supervised and appropriately qualified shall be appointed auditors of companies, and audits by persons so appointed shall be carried out properly and with integrity and with a proper degree of independence.

Eligibility for Appointment

158. (1) A person is eligible for appointment as auditor of accompany only if he

(a) is a practicing member of a recognized supervisory body, and

(b) is eligible for the appointment under the rules of that body.

(2) An individual or a firm may be appointed as auditor of a company.

(3) In this section “recognized supervisory body” means the Institute of Chartered Accountants of St. Vincent and the Grenadines and any other body recognized as such by order of the Minister responsible for Legal Affairs published in the Gazette.

(3) In this section “recognized supervisory body” means the Institute of Chartered Accountants of St. Vincent and the Grenadines and any other body recognized as such by order of the Minister responsible for Legal Affairs published in the Gazette.

Effect of Appointment Of partnership

159. (1) The appointment as auditor of a company of a partnership constituted under the laws of St. Vincent and the Grenadines or under the law of any other country or territory in which a partnership is not a legal person shall be unless a contrary intention appears, an appointment of the partnership as such and not of the partners.

(2) Where the partnership ceases, the appointment shall be treated as extending to

(a) any succeeding partnership which is eligible for the appointment, and

(b) any person who succeeds to that practice having previously carried it on in partnership and is eligible of the appointment.

(3) For this purpose a partnership shall be regarded as a succeeding partnership only if the members of the succeeding partnership are substantially the same as those of the former partnership and 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.

(4) Where the partnership ceases and no person succeeds to the appointment under subsection (2), 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 its as is agreed by the company.

Ineligibility on Ground of lack Of independence

160. (1) A person is ineligible for appointment as auditor of a company if he is

(a) an officer or employee of the company, or

(b) a partner or employee of on of partnership of which that office or employee is a partner, or if he is ineligible by virtue of paragraph (a) or (b) for appointment as auditor of any associated undertaken of the company.

(2) A person is also ineligible for appointment as auditor of a company if there exists between him and any associate of his and the company or any associated undertaking a connection of any such description as may be specified by regulations made under section 527.

(3) In this section “associated undertaking” in relation to a company means

(a) a parent undertaking or subsidiary undertaking of company, or

(b) a subsidiary undertaking of any parent undertaking of the company.

(4) In proceedings against a person for an offence under this section it is a defense for him to show that he did not know and had no reason to believe that he was or had become ineligible for appointment.

Appointment Of auditor

162. (1) Subject to section 163, the shareholders of a company shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 65 (1) (e) is eligible for appointment under subsection (1).

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

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

Dispensing with auditor

163. (1) The shareholders of a company other than a company mentioned in subsection (1) of section 154 may resolve not to appoint an auditor.

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

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

Cessation of Office

164. (1) An auditor of a company ceased to hold office when

(a) he dies or resigns, or

(b) he is removed pursuant to section 165.

(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.

Removal of Auditor

165. (1) The shareholders 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 167.

(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 166.

Filling Auditor Vacancy

166. (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 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.

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

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

Court appointed auditor

167. (1) If a company does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until a successor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 163 not to appoint an auditor.

Auditor's Right to Notice

168. The auditor of a company is entitled to receive notice of every meeting of the shareholders 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.

Required Attendance

169. (1) If a shareholder of a company, whether or not he is entitled to vote a the meeting, or a director of a company gives written notice to the auditor of the company, not less than 10 days before a meeting of the shareholders 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.

(2) A shareholder 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 mutates mutandis to any former auditor of the company.

Right to Comment

170. (1) An auditor who

(a) resigns,

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

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

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 163 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 forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 168 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required y section 142.

Examination By auditor

171. (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report din the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (a) of subsection (1) of section 149.

(2) Notwithstanding section 172, 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 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.

Right to Inspect

172. (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 171 and that the directors, officers, employees or agents are reasonable 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 these persons 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 171, and

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

Detected Error

173. (1) A director or an officer of a company shall forthwith 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 mis-statement in a financial statement upon which he has reported to the company and in his opinion, the error or mis-statement 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 mis-statement in a financial statement of the company, the directors shall

(a) prepare and issue revised financial statements, or

(b) otherwise inform the shareholders of the error or misstatement, and, if the company is one that is required to comply with section 154, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

Privilege of Auditor

174. 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 authorized or required to do under this Act.

DIVISION H - CORPORATE RECORDS

Registered Office of Company Registered Office

175. (1) A company shall at all times have a registered officer in the State.

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

Notice of Address

176. (1) At the time of sending articles of incorporation, the incorporators shall send to the Registrar, in the prescribed form, notice of the address of the registered office of the company and the Registrar shall file the notice.

(2) A company shall within 15 days of any change of the address of its registered office, send to the Registrar a notice in the prescribed form of the change, which the Registrar shall file.

Company Registers and Records Records of Company

177. (1) A company shall prepare and maintain at its registered office records containing

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

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

(c) copies of all notices required by section 69, 77 or 176.

(2) A company shall prepare and maintain a register of members showing

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

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

(c) the date on which each person was entered on the register as a member, and the date on which any person ceased to be a member.

(3) A company shall prepare and maintain a register of its directors and secretaries and a register of its directors' holdings in accordance with sections 178 to 180.

(4) A public company shall prepare and maintain a register of substantial shareholding the company in accordance with sections 181 to 185.

(5) A company that issues debentures shall prepare and maintain a register of debenture holders showing

(a) the name and the latest known address of each debenture holder;

(b) the principal of the debentures held by each holder;

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

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

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

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

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

(7) A company may appoint an agent to prepare and maintain the registers required by this section to be prepared and maintained by the company and the registers may be kept at the registered office of the company or at some other place in the State designated by the directors of the company.

Register of Directors and Secretaries

178. (1) The register of directors and secretaries kept by a company pursuant to subsection (3) of section 177 shall contain with respect to each director

(a) a statement of his full name any former name or surname, (if any) his usual residential address and his business occupation (if any);

(b) particulars of other directorships held by him; and

(c) a statement as to who is, or who is to perform the function of, the managing director.

(2) The register kept by a particular company need not contain, pursuant to subsection (1) (b), particulars of directorships held by a director in any company of which the particular company is a wholly owned subsidiary.

(3) The register shall contain with respect to the secretary and each assistant secretary

(a) in the case of an individual, a statement of his full name any former name or surname (if any), and his usual residential address;

(b) in the case of a corporation, a statement of its corporate name and registered or principal office; and

(c) in the case of a firm, a statement of the name and principal office of the firm.

(4) A company shall lodge with the Registrar

(a) within one month after a person ceases to be director or, except in the case of a person becoming a director pursuant to section 69, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each person who is then a director of the company, the particulars required to be specified in the register in relation to him;

(b) within one month after a person becomes the secretary or an assistant secretary, a return in the prescribed form notifying the Registrar of that fact and containing with respect to the person, the particulars required to be specified in the register in relation to such a person; and

(c) within one month after a person ceased to be the secretary or an assistant secretary, a return in the prescribed form notifying the Registrar of that fact.

(5) A director in respect of whom an entry is required to be made in the required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(6) A director commits an offence

(a) if he fails to comply with subsection (5); or

(b) if he gives false, misleading or incomplete information to any company for entry in its register.

Register of Directors' Holdings

179. (1) A public company shall keep a register showing the required particulars with respect to any interest in shares in, or debentures of, the company or of any affiliate or associate of the company, which is vested in a director.

(2) For the purposes of this section, an interest in shares or debentures in vested in a director if

(a) the shares or debentures are registered in the director's name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them;

(b) the director has a derivative interest in the shares or debentures, or a right or power to acquire a derivative interest in them;

(c) the director has a right to subscribe for the shares or debentures, or another person has a right to acquire them after they have been allotted;

(d) the shares or debentures are the subject of a voting arrangement in favor of a director, (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of shareholders or at any meeting of a class of shareholders or debenture holders, or by which the debenture may require the holder of the shares or other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.

(3) For the purposes of subsection (1), the required particulars with respect to an interest in shares or debentures vested in a director are

(a) the number and classes of the shares and the number, classes and the amount of he principal and premiums payable to the holder of the debentures;

(b) the nature of the interest and its duration (if it is limited in duration);

(c) the date of the acquisition of the interest and the consideration (if any) given by the director or any other person for the acquisition; and

(d) the date of the disposal of the interest by the director or the date of its cessation (whichever first occurs) and the consideration (if any) received by him or nay other person for such disposal or cessation.

(4) A director in respect of whom any entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(5) This section extends to interest in shares and debentures vested in a director at the time when he becomes a director, and subsection (4) applies in that case with the substitution of a period of seven days after the director becomes a director for the period of seven days after the matter occasioning the requirement of an entry occurs or arises.

(6) Entries in the register against the several names recorded in the register shall appear in chronological order.

(7) The entries required by this section to be made in the register shall not be removed there from notwithstanding the fact that ceases to be a director, but it shall not be necessary to make an entry in the register in respect of a matter, which occurs or arises after he ceases to be a director.

(8) This section does not apply to an interest of a director, which is created by the articles of incorporation of company if the interest is one, which is conferred on all the shareholders of the class concerned, on the same terms and conditions, as on the director, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.

(9) A company and every director of a company who is in default commits an offence (a) if the company fails to make an entry required by this section to be made in the register within three days after written notification of the matter required to be registered is given to it or any of its directors (other than a person in respect of whom an entry is required to made) acquires knowledge of the matter in relation to which an entry is required to be made (whichever is the earlier); or

(b) if the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in the register.

(10) A director of company commits an offence if he fails to give a written notice of any matter in compliance with subsection (4) or (5), within the time thereby limited, to every company which is required to make an entry in relation to the matter in the register, or if he gives false, misleading or incomplete information to any such company for entry in its register.

Extension of Section to Associates of Directors

180. (1) For the purposes of section 179

(a) an interest of an associate of a director of a company (not being himself a director thereof) in shares or debentures shall be treated as being the director’s interest; and

(b) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, an associate of a director of a company (not being himself a director thereof) shall be treated as having been entered into, exercised or made by, or as the case may be, as having been made to, the director.

(2) A director of a company shall be under an obligation to notify the company in writing of the occurrence while he is director, of either of the following events –

(a) the grant by the company to an associate of his of a right to subscribe for shares in, or debentures of, the company; and

(b) the exercise by an associate of his of such a right as aforesaid granted by the company.

Stating, in the case of the grant of a right, the like information as is required by section 179 to be stated by the director on the grant to him by another company of a right to subscribe for shares in, or debentures of, that other company and, in the case of the exercise of a right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another that the company and an obligation imposed by this subsection on a director shall be fulfilled by him before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.

(3) A person commits an offence if he fails to give a written notice of any matter in compliance with subsection (2), within the time thereby limited, to the company concerned, or if he gives false, misleading or incomplete information to the company.

Substantial Shareholders Register

Substantial Shareholder

181. (1) For the purpose of sections 182 to 185 a person has a substantial shareholding in a company if he holds, by himself or by his nominee, shares in the company of the unrestricted voting rights at any general meeting of shareholders.

(2) For the purposes of the said sections, a person who has a substantial shareholding in a company is a substantial shareholder of the company.

Substantial Shareholder Notify company

182. (1) A person who is a substantial share-holder in a company shall give notice in writing to the company stating his name and address and giving all particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after that person becomes aware that he is a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

Ex-substantial Shareholder to Notify company

183. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after he becomes aware that he has ceased to be a substantial shareholder.

Company to keep register of substantial shareholders

184. (1) A company shall keep a register in which it shall enter

(a) in alphabetical order the names of persons from whom it has received a notice under section 182; and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 183, the information given in that notice.

(2) The Registrar may at any time writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within fourteen days after the day on which the requirement is received by the company.

(3) If default is made in complying with this section, the company and every officer of the company who is in default commits an offence.

(4) A company is not, by reason of anything done under sections 182 to 184

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to, a right of a person to or in relation to a share in the company.

Offence

185. A person who fails to comply with section 182 or 183 commits an offence.

Records of Trusts Trust notices

186. (1) Except as provided in this section, notice of a trust, express, implied or constructive, shall not be.

(a) entered by a company in any of the registers maintained by it pursuant to section 177, or

(b) received by the Registrar.

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

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a member or debenture holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture holder may become registered in a register of the company may, with the consent of the company and of the registered member or debenture holder, become the registered member or debenture holder as the personal representative of the estate.

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

Accounts, Minutes and Other Records Other Records

187. (1) In addition to the records described in section 177, a company shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in the State designated by the directors; and those records shall at all reasonable times be available for inspection by the directors and shareholders.

(3) When any accounting records of a company are kept at a place outside the State accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis shall be kept by the company at the registered office of the company or at some other place in the State designated by the directors.

(4) For the purposes of paragraph (b) of subsection (1) of section 177 and of this section, when a former Act company is continued under this Act, “records” includes similar registers and other records required by law to be maintained by the company before it was continued under this Act.

Form of Records Records Form

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

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

(b) may be entered or recorded

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

(ii) by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Care of Records Duty of Care of records

189. A company and its agents shall take reasonable precautions

(a) to prevent loss or destruction of,

(b) to prevent falsification of entries in, and

(c) to facilitate detection and correction of inaccuracies in, the records required by this Act to be prepared and maintained in respect of the company.

Access to Records Access to Records

190. (1) The directors and shareholders of a company, and their agents and legal representatives, may, during the usual business hours of the company, examine the records of the company referred to in section 177 and may take extracts there from free of charge.

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

Shareholders' Lists Basic list of shareholders

191. (1) Upon payment of a reasonable fee and on the dispatch to a public company or its transfer agent of the affidavit referred to in subsection (4), any person may upon application require the company or its transfer agent to furnish him, within 15 days from the receipt of the affidavit, a list of members of the company, in this section referred to as the "basic list", made up to a date not more that 30 days before the date of receipt of the affidavit, which shall set out

(a) the names of the members of the company,

(b) the number of shares held by each member, and

(c) the address of each member as shown on the records of the company.

(2) When a person requiring a basic list from a public company states in the affidavit referred to in subsection (4) that he requires supplemental lists from the company, he may, upon payment of a reasonable fee, require the company or its transfer agent to furnish him with supplemental lists of the members, which shall set out any changes from the basic list

(a) in the name or addresses of the members, and

(b) in the number of shares held by each member for each business day following the date to which the basic list is made up.

(3) When a supplemental list has been required from a public company under subsection (2) by any person, the company, or its transfer agent, shall furnish that person with a supplemental list

(a) on the date the basic list is furnished, if the information relates to changes that took place before that date, and

(b) on the business day following the day to which the supplemental list relates if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) shall state

(a) the name and address of the applicant;

(b) the name and address for service of the body corporate, if the applicant is a body corporate; and

(c) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 193.

(5) If the applicant is a body corporate, the affidavit shall be made by a director or officer of the body corporate.

Options List

192. A person requiring under section 191 that a company supply a basic list or a supplemental list may also require the company to include in any such list the name and address of any known holder of an option or right to acquire shares of the company.

Restricted use Of lists

193. A list of members obtained under section 191 from a company shall not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the company;

(b) an offer to acquire shares in the company;

(c) any other matter relating to the affairs of the company.

Annual

194. (1) 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 a return in the prescribed form containing the prescribed information made up to the preceding thirty-first day of December and accompanied with the prescribed fees.

(2) A director or officer of the company shall certify the contents of every return made under this section.

(3) If default is made in complying with section, the company and every director and officer who is in default commits an offence.

DIVISION I - TRANSFER OF SHARES AND DEBENTURES

Transferring Of shares

195. (1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by “The Register of Companies” and naming the transferee.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument shall be used to transfer the shares or debentures of the company.

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

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to the transferee

(a) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor’s share certificate or debenture, as the case may be, or

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

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

(6) Notwithstanding subsection (4) or (5), a company, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered or until the court orders the registration of the transfer to him and until the transfer is presented to the company for registration, the company is not to be treated as having notice of the transferee’s interest there under or of the fact that the transfer has been made.

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

Restrictions On transfers

196. (1) No restriction or condition in a trust deed covering a debenture of a company, or in the debenture, limits the right of any person to transfer the debenture held by him.

(2) A transfer of the shares or debentures of a shareholder or debenture holder of a company made by

(a) his personal representative,

(b) a trustee in bankruptcy,

(c) a receiver appointed by or for the benefit of debenture holders,

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

(e) the guardian of a minor, or

(f) a person appointed by the court to execute the transfer, is, although the person executing the transfer is not himself registered with the company as the holder of the shares or debentures, as the case may be, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

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

Duty to Issue

197. (1) A company shall issue a certification of the transfer of a share or debenture on the presentation to the company of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the company of the share or debenture.

(2) A certification consists of a statement signed on behalf of the company and written or endorsed on the transfer to the effect that the share certificate or debenture, as the case may be, has been delivered to, or lodged with, the company.

(3) The certification by a company of any transfer of a share or debenture of the company is a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the share or debenture in the transferor named in the transfer but is not a representation that the transferor has any title to the share or debenture.

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

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

(6) For the purposes of this section –

(a) the certification of a transfer is deemed to be made by a company if

(i) the person issuing the certification is a person authorized to issue certifications of transfers on the company’s behalf, and

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

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

Transfer Certificate

198. (1) A company shall, within 5 weeks after the allotment of any of its shares or debentures, and within 2 months after the date on which a transfer of any of its shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for any share or debenture allotted or transferred to him.

(2) When a company on which a notice is served requiring the company to make a good any default in complying with subsection (1) fails to make good the default within 7 days after the service of the notice, the court may, on the application of the person entitled to have a certificate or debenture delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order and the order may provide that all costs incidental to the application be borne by the company and any officer of the company responsible for the default.

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

Registration

199. (1) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor has been delivered to the company but nothing in this section affects any duty of the company to register as a member or debenture holder of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture of a company, the company shall enter in its register of members or debenture holders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(3) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company shall register the trustee in bankruptcy or the personal representative of a shareholder or debenture holder as a member in respect of the shares, or as holder of the debentures of the bankrupt or as the case may be, the deceased person, in its register of members or debenture holders, as the case may be, within 7 days after he produces to the company satisfactory evidence of his title and requests to be registered as a member or debenture holder.

Effect to Certificate

200. (1) A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company are held by any person is prima facia proof of the title of that person to the shares or debentures.

(2) The registration of a person as a member or debenture holder of a company, or the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned in the register or in the share certificate or debenture and the company may not deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or debentures or any interest therein good faith and for money or money's worth.

**(3)* It is no defense for a company to show for the purposes of subsection

(2) that a registration or the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

(4) Subsection (2) and (3) do not apply in respect of certificates issued by a former Act company before the commencement date.

DIVISION J - TAKEOVER BIDS

Definitions 201. In this Division,

(a) "dissenting offeree", if a take-over bid is made for all the shares of a class of shares,

(i) means a shareholder of that class of share who does not accept the take-over bid, and

(ii) includes a subsequent holder of that share who acquires it from the person mentioned in sub-paragraph (i);

(b) "offer" includes an invitation to make an offer;

(c) "offeree" means a person to whom a take-over bid is made;

(d) "offeree company" means a company whose shares are the object of a take-over bid;

(e) "offeror" means a person who makes a take-over bid otherwise than as an agent, and includes 2 or more person who, directly or indirectly,

(i) make take-over bids jointly or in concert; or

(ii) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

(g) "take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of any class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

Offeror Rights

202. If, within 120 days after the date of a take-over bid, the bid is accepted by the holders of not less than 90 percent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror may, upon complying with this Division, acquire the shares held by the dissenting offerees.

Notice to Dissenting Shareholders

203. An offeror may acquire shares held by a dissenting offeree by sending by registered post, within 60 days after the date of termination of the take-over bid, and in any event within 180 days after the date of the take-over bid an offeror's notice to each dissenting offeree and to the Registrar stating.

(b) that offerees who are holding 90 percent or more of the shares to which the bid relates accepted the take-over bid;

(c) that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;

(d) that a dissenting offeree is required to elect.

(i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid; or

(ii) to demand payment of the fair value of his shares in accordance with sections 209 to 212 by notifying the offeror within 20 days after the dissenting offeree receives the offeror's notice;

(e) that a dissenting offeree who does not notify the offeror in accordance with subparagraph (ii) of paragraph (c) is presumed to have elected to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bids; and

(f) that a dissenting offeree shall send those shares to which the take-over bid relates to the offeree-company within 20 days after he receives the offeror's notice.

Adverse claims. 204. Concurrently with sending the offeror's notice under section 203, the offeror shall send to the offeree-company a notice of adverse claim with respect to each share hled by a dissenting offeree.

Delivery of Certificates

205. A dissenting offeree to whom an offeror's notice is sent under section 203 shall, within 20 days after he receives that notice, send the share certificate for the class of shares to which the take-over bid relates to the offeree-company.

Payment of Shares

206. Within 20 days after the offeror sends an offeror's notice under section 203, the offeror shall pay or transfer to the offeree-company the amount of money of other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under subparagraph (i) of paragraph (c) of section 203, to accept the take-over bid.

Money in Trust

207. The offeree-company holds in trust for the dissenting shareholders the money or other consideration it receives under section 206 and the offeree-company shall deposit the money in a separate account in a bank and shall place the other consideration in the custody of a bank.

Duty of Offeree-company

208. Within 30 days after the offeror sends an offeror's notice under section 203, the offeree-company shall

(a) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;

(b) give to each dissenting offeree who,

(i) under subparagraph (i) of paragraph (c) of section 203, elects to accept the take-over bid, and

(ii) sends his share certificates as required under section 205, the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money; and

(c) send to each dissenting shareholder who has not sent his share certificates as required under section 205 a notice stating that

(i) his shares have been cancelled;

(ii) the offeree-company or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares; and

(iii) the offeree-company will, subject to sections 209 to 211, send that money or other consideration to him forthwith after receiving his shares.

Application To court

209. (1) If a dissenting offeree has, under subparagraph (ii) of paragraph (c) of section 203, elected to demand payment of the fair value of his shares, the offeror may, within 20 days after it has paid the money or transferred the other consideration under section 206, apply to the court to fix the fair value of the shares of that dissenting offeree.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of 20 days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided therefore in that subsection, a dissenting offeree thereby elects to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

Joined parties

210. Upon an application under section 209

(a) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 203 whose shares have not been acquired by the offeror are to be joined as parties and are bound by the decision of the court; and

(b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or be represented by an attorney-at-law.

Powers and Order of court

211. (1) In connection with proceedings under this Division, the court may make any order it thinks fit, and, in particular, it may

(a) fix the amount of money or other consideration that is required to be held in trust under section 207;

(b) order that the money or other consideration be held in trust by a person other than the offeree-company;

(c) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 205 until the date of payment, a reasonable rate of interest on the amount payable to him; or

(d) order that any money payable to a shareholder who cannot be found be paid into court and subsection (2) of section 479 applies in respect of that payment.

DIVISION K - FUNDAMENTAL COMPANY CHANGES

Altering Articles

Fundamental Amendment To articles

213. (1) Subject to section 215 and 216, the articles of a company may, by special resolution, be amended –

(a) to change its name;

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

(c) to change any maximum number of shares that the company is authorized to issue;

(d) to create new classes of shares;

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

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

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

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

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

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

(k) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 71 and 76;

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

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

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

(3) A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business and affairs of the

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

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

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

(h) to constrain the issue or transfer of the shares of that class, or extend or remove the constraint.

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

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

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

Delivery of Articles

216. (1) Subject to any revocation under subsection (2) of section 213, after an amendment has been adopted under section 213 or 215, articles of amendment in the prescribed form shall be sent to the Registrar.

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

Certificate Of amendment

217. (1) Upon receipt of articles of amendment from a company, the Registrar shall issue to the company a certificate of amendment in accordance with section 503.

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

(3) No amendment to the articles affects

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

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

Re-stated Articles

218. (1) The directors of a company may at any time, and shall, when reasonably so directed by the Registrar, restate the articles of incorporation of the company as amended.

(1) Re-stated articles of incorporation in the prescribed form shall be sent to the Registrar.

(2) Upon receipt of re-stated articles of incorporation, the Registrar shall issue a re-stated certificate of incorporation in accordance with section 503.

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

Amalgamations

Amalgamation company

219. Two or more companies, including holding and subsidiary companies, may amalgamate and continue as one

Agreement for Amalgamation

220. (1) Each company proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, and in particular, setting out

(a) the provisions that are required to be included in articles of incorporation under section 5;

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

(c) the manner in which the shares of each amalgamating company are to be converted into shares or debentures of the amalgamated company;

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

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

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

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

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

Approval by Shareholders

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

(2) A notice of a meeting of shareholders complying with section 111 shall be sent in accordance with that section to each shareholder of each amalgamating company and the notice

(a) shall include or be accompanied by a copy or summary of the amalgamation agreement; and

(b) shall state that a dissenting shareholder is entitled to be aid the fair value of his shares in accordance with section 226; but failure to make the statement referred to in paragraph (b) does not invalidate an amalgamation.

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

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 215.

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

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

Vertical Short-form Amalgamation

222. A holding company and one or more of its wholly owned subsidiary companies may amalgamate and continue as one company without complying with sections 220 and 221, if

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

(b) the resolutions provide that

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

(ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding company; and

(iii) no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

Horizontal Short-term Amalgamation

223. Two or more wholly-owned subsidiary companies of the same holding body corporate may amalgamate and continue as one company without complying with sections 220 and 221 if

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

(b) the resolutions provide that

(i) the shares of all but one of the amalgamating subsidiary companies will be cancelled without any repayment of capital in respect of the cancellation;

(ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary company whose shares are not cancelled; and

(iii) the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

Articles of Amalgamation

224. (1) Subject to subsection (6) of section 221, after an amalgamation has been adopted under section 221 or approved under section 222 or 223 , articles of amalgamation in the prescribed form shall be sent to the Registrar together with the documents required by sections 69 and 176.

(2) There shall be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating company that establishes to the satisfaction of the Registrar

(a) that there are reasonable grounds for believing that

(i) each amalgamating company is and the amalgamated company will be, able to pay its liabilities as they become due; and

(ii) the realisable value of the amalgamated company’s assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

(b) that there are reasonable grounds for believing that

(i) no creditor will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

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

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1000;

(b) a notice is published once in a newspaper published or distributed in the State; and

(c) each notice states that the company intends to amalgamate with one or more specified companies in accordance with this Act, and that a creditor of the company can object to the amalgamation within 30 days from the date of the notice.

Certificate of Amalgamation

225. (1) Upon receipt of articles of amalgamation, the Registrar shall issue a certificate of amalgamation in accordance with section 503.

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

(a) the amalgamation becomes effective;

(b) the property of each amalgamating company becomes the property of the amalgamated company and is vested in that company without further assurance.

(c) the amalgamated company becomes liable for the obligations of each amalgamating company;

(d) any existing cause of action, claim or liability to prosecution is unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and

(g) the articles of amalgamation are the article of incorporation of the amalgamated company, and, except for the purposes of subsection (1) of section 65, the certificate of amalgamation is the certificate of incorporation of the amalgamated company.

Dissenters' Rights and Obligations

Dissent by shareholder

226. (1) Subject to sections 236 and 241, a shareholder of any class of shares of a company may dissect if the company resolves (a) to amend its articles under section 213 to add, change or remove any provisions restricting the issue or transfer of shares of that class;

(b) to amend its articles under section 213 to add, change or remove any restriction upon the businesses that the company can carry on;

(c) to amalgamate with another company, otherwise than under section 222 or 223; or

(d) to sell, lease or exchange all or subsequently all its property under section 136.

(2) Subject to sections 236 and 241, a shareholder of any class of shares of a company may dissect if the company is subject to an order of the court under section 237 permitting the shareholders to dissent.

(3) The articles of a company that is not a public company may provide that a shareholder of any class or series of shares who is entitled to vote under section 215 may dissect if the company resolves to amend its articles in a manner described in that section.

(4) In addition to any other right he has, but subject to section 235, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class or series

(a) held by him on behalf of any one beneficial owner, and

(b) registered in the name of the dissenting shareholder.

(6) A dissenting shareholder shall send to the company, at or before any meeting of shareholders of the company at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(8) When a shareholder of a company has dissented pursuant to subsection (6) to a resolution referred to in subsection (1) or (3), the company shall, within 10 days after the shareholders of the company adopt the resolution, send to the shareholder notice that the resolution has been adopted but the notice need not be sent to the shareholder if he has voted for the resolution or has withdrawn his dissent.

Demand for Payment

227. (1) a dissenting shareholder shall within 20 days after he receives a notice under subsection (7) of section 226, or, if he does not receive that notice, within 20 days after he learns that a resolution under that subsection has bee adopted, send to the company a written notice containing

(a) his name and address;

(b) the number and class or series of shares in respect of which he dissents; and

(c) a demand for payment of he fair value of the shares.

(2) A dissenting shareholder shall within 30 days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the company or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has no right to make a claim under this section.

(4) A company or its transfer agent shall endorse on any share certificate received by it under subsection (2) a notice that the holder of the share is a dissenting shareholder under this section, and dissenting shareholder.

Suspension of Rights

228. After sending a notice under section 227, a dissenting shareholder ceases to have any rights as a shareholder, other than the right to be paid the fair value of his shares as determined under this section, unless

(a) the dissenting shareholder withdraws his notice before the company makes an offer under section 229;

(b) the company fails to make an, offer in accordance with section 229 and the dissenting shareholder withdraws his notice; or

(c) the directors

(i) under subsection (2) or section 213 revoke a resolution to amend the articles of the company;

(ii) under subsection (6) of section 221, terminate an amalgamation agreement; or under subsection (7) of section 136, abandon a sale, lease or exchange of property, in which case his rights as a shareholder are re-instated as of the date the notice mentioned in section 227 was sent.

Offer to pay for Share

229. (1) A company shall, not later than 7 days after the day on which the action approved by the resolution is effective, or the day the company received the notice referred to in section 227, whichever is the later date, send to each dissenting shareholder who has sent such a notice

(a) a written offer to pay for his shares in an amount considered by the directors of the company to be the fair value of those shares, which shall be accompanied with a statement showing how the fair value was determined; or

(b) if section 235 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) Every offer made under subsection (1) for shares of the same class or series shall be on the same terms.

(3) Subject to section 235, a company shall pay for the shares of a dissenting shareholder within 10 days after an offer made under subsection

(4) had been accepted but the offer lapses if the company does not receive an acceptance of the offer within 30 days after it has been made.

Application To court

230. (1) If a company fails to make an offer under subsection (1) of section 229, or if a dissenting shareholder fails to accept the offer made by the company, the company may, within 50 days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of any dissenting shareholders.

(2) If a company fails to apply to the court in the circumstances described in subsection (1), a dissenting shareholder may, within a further period of 20 days, apply to the court to fix a fair value for the shares of any dissenting shareholders.

Joined Parties

231. Upon an application to the court under section 230,

(a) all dissenting shareholders whose shares have not been purchased by the company are to be joined as parties and are bound by the decision of the court; and

(b) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by an attorney-at-law.

Court powers

232. (1) Upon an application to the court under section 230, the court may determine whether any other person is a dissenting shareholder who should be joined as a party; and the court shall then fix a fair value for the shares of the dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court shall be made against the company in favour of each dissenting shareholder of the company and for the amount of the shares of he dissenting shareholder as fixed by the court.

Interest

233. The court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date the action approved by the resolution is effective until the date of payment by the company.

Recourse of Dissenting Shareholder

234. (1) If section 235 applies, the company shall within ten days after the making of an order under subsection (3) of section 232, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(2) If section 235 applies, a dissenting shareholder, by written notice delivered to the company within thirty days after receiving a notice under subsection (1)

(a) may withdraw his notice of dissent, in which case the company withdrawal and the shareholder is re-instated to his full rights as a shareholder; or

(b) may retain a status as a claimant against the company entitled to be paid as soon as the company is lawfully able to do so, or, in a winding-up, to be ranked subordinate to the rights of creditors of the company, but in priority to he company's shareholders.

Prohibition of Payment

235. A company shall not make a payment to a dissenting shareholder under section 229 if there are reasonable grounds for believing

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

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

Re-organization

236. (1) In this section, "re-organization" means

(a) a court order made under section 241;

(b) a court order approving a proposal under the Bankruptcy Act; or

(c) a court order that is made under any other enactment and that affects the rights among the company, its shareholders and creditors.

(2) If a company is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 213.

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

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

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

(4) After an order referred to in subsection (1) has been made, articles of re-organization is the prescribed form shall be sent by the company to the Registrar, together with the documents required by sections 69 and 176, if applicable.

(5) Upon receipt of articles of re-organisation for a company, the Registrar shall issue a certificate of amendment in accordance with section 503.

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

(7) A shareholder of a company is not entitled to dissent under section 226 if an amendment to the articles of incorporation of the company is effected under this section.

Arrangements

237. (1) In this section, “arrangements” includes

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

(b) an amalgamation of two or more companies;

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

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

(e) an exchange of shares or debentures held by shareholders or debenture holders of a company for property, money or other shares or debentures of the company, or of another body corporate if it is not a take-over bid within the meaning of Division J;

(f) a winding up and dissolution of a company; and

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

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

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

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

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

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

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

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

(c) an order permitting a shareholder to dissent under section 226; or

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

(5) An applicant under this section shall give the Registrar notice of the application and the Registrar may appear and be heard in person or be represented by an attorney-at-law.

(6) After an order referred to in paragraph (d) of subsection (4) has been made, articles of arrangement in the prescribed form shall be sent to the Registrar together with the documents required by section 77 and 176, if applicable.

(7) Upon receipt of articles of arrangement, the Registrar shall issue a certificate of amendment in accordance with section 503.

(8) An arrangement becomes effective on the date shown in the certificate of amendment.

DIVISION L - CIVIL REMEDIES

Definitions

238. In the Part,

(a) “action” means an action under this Act;

(b) “complainant” means

(i) a shareholder or debentures holder, or a former holder of a share or debenture of a company or any of its affiliates;

(ii) a director or an officer or former director or officer of a company or any of its affiliates;

(iii) the Registrar; or

(iv) any other person who, in the discretion of the court, is a proper person to make an application under this Part.

Derivative Action

239. (1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which such company or any its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied

(a) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action.

(b) That the complainant is acting in good faith; and

(c) That it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Court powers.

240. In connection with an action brought or intervened in under section 239, the court may at any time make any order it thinks fit, including

(a) an order authorizing the complainant, the Registrar or any other person to control the conduct of the action;

(b) an order giving directors for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debenture holders of the company or its subsidiary, instead of to the company or is subsidiary; or

(d) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Restraining Oppression

Oppression Restraining

241. (1) A complainant may apply to the court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates –

(a) any act or omission of the company or any of its affiliates affects a result,

(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a negligent manner, or

(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

(3) an order restraining the conduct complained of;

(a) an order restraining the conduct complained of;

(b) an order appointing a receiver or receiver-manager;

(c) an order to regulate a company's affairs by amending its articles or by-laws, or creating or amending a unanimous shareholder agreement;

(d) an order directing an issue or exchange of shares or debentures;

(e) an order appointing directors in place of, or in addition to, all or any of the directors then in office;

(f) an order directing a company, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;

(g) an order directing a company, subject to subsection (6), or any other person, to pay to a shareholder or debenture holder any part of the moneys paid by him for his shares of debentures;

(h) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;

(i) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 149 or an accounting in such other form as the court may determine;

(j) on order compensating an aggrieved person;

(k) an order directing rectification of the registers or other records of a company under section 244;

(l) an order winding up and dissolving the company;

(m) an order directing an investigation under Division B or Part V to be made; or

(n) an order requiring the trial of any issue.

(4) If an order made under this section directs the amendment of the articles or by-laws of a company,

(a) the directors shall forthwith comply with subsection (4) of section 236; and

(b) no other amendment to the articles or by-laws may be made without the consent of the court, until the court otherwise orders.

(5) A shareholder is not entitled under section 226 to dissent if an amendment to the articles is effected under this section.

(6) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

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

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

(7) An applicant under this section may apply in the alternative for an order under section 377.

Staying action

242. (1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary but evidence of approval by the shareholders may be taken into account by the court in making an order under section 240, 241 or 377.

(2) An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

Interim Costs

243 In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements but the complainant may be held accountable for those interim costs upon the final disposition of the application or action.

Rectification Of Records

244. (1) If the name of a person is alleged to be is wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture holder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.

(2) An applicant under this section shall give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or be represented by an attorney-at-law.

(3) In connection with an application under this section, the court may make any order it thinks fit including,

(a) an order requiring the registers or other records of the company to be rectified;

(b) an order restraining the company from calling or holding a meeting of shareholders, or paying a dividend before that rectification;

(c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between 2 or more shareholders or debenture holders or alleged debenture holders; and

(d) an order compensation a party who has incurred a loss.

Other Remedial Actions

Directors for Registrar

245. The Registrar may apply to the court for directions in respect of any matter concerning his duties under this Act and on the application, the court may give a such directions and make such further order as it thinks fit.

Refusal by Registrar

246. (1) When the Registrar refuses to file any article or other document required by this Act to be filed by him before the articles or other document become effective, the Registrar shall

(a) within 60 days after the receipt thereof by him, or 60 days after he receives any approval required under any other Act, whichever is the later date, and,

(b) after giving the person who sent the articles or document an opportunity to be heard, give written notice of the refusal to that person, together with the reasons for the refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles or document within the time limited thereof in subsection (1), then, for the purpose of section 247, the Registrar has refused to file the articles or document.

Appeal from Registrar

247. A person who feels aggrieved by the decision of the Registrar

(a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him;

(b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 11 to 14;

(c) to refuse to grant an exemption under subsection (2) of section 10, section 144, section 150 or subsection (3) of section 154 and any regulations; or

(d) to refuse under subsection (2) of section 366 to permit a continued reference to shares having a nominal or par value may apply to the court for an order requiring the Registrar to change his decision and upon the application the court may so order, and make any further order it thinks fit.

Restraining Order, etc.

248. If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with this Act, any regulations, articles, by-laws, or any unanimous shareholder agreement of the company, a complainant or creditor of the company may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act, regulations made or any articles, by-laws or unanimous shareholder agreement, as the case may be.

Summary Application

249. Subject to this Act, where it is provided that a person may apply to the court, the application may be made in a summary manner by originating summons, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs or any other order the court thinks fit.

PART II - PROTECTION OF CREDITORS AND INVESTORS

DIVISION A- REGISTRATION OF CHARGES

Charges Registration With Registrar

250. (1) Subject to this Division, where a charge to which this section applies is created by a company, the company shall within 28 days after its creation of lodge with the Registrar a statement of the charge and

(a) any instrument by which it is created or evidenced; or

(b) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument, and if this provision is not complied with in relation to the charge, it is void in respect of any security interest it is thereby purported to create.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge that is void under that subsection and the money received under the charge becomes immediately payable.

(3) This section applies to all charges created by a company except (a) any pledge of, or possessory lien on, goods, and

(b) any charges by way of pledge, deposit or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.

Contents of Charge statements

251. (1) Subject to subsections (2) and (3), the statement referred to in section 250 shall contain the following particulars –

(a) the date of the creation of the charges;

(b) the nature of the charge;

(c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 255;

(d) short particulars of the property charged;

(e) the persons entitled to the charge; and

(f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally, it is sufficient if there is lodged with the Registrar within 28 days after the execution of the instrument containing the charges, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following –

(a) the total amount secured by the whole series;

(b) the dates of the resolutions authorizing the issue of the series and the date of any covering instrument by which the security interest is created or defined;

(c) the name of any trustee for the debenture holders; and

(d) the particulars specified in paragraphs (b), (d) and (f) of subsection (1).

(3) The statement referred to in subsection (2) shall be accompanied by the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the copy to be a true copy but, if there is no such instrument, the statement shall be accompanied by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

Certified copy Of instrument

252. For the purposes of subsection (1) of section 250 and subsection (3) of section 251, a certified copy of an instrument or debenture is a copy of the instrument or debenture that has endorsed on it a certificate.

(a) that states that the instrument or debenture is a true and complete copy of the original and

(b) that is under seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

Later charges 253. When a charge requiring registration under sections 250 to 252

(a) is created before the lapse of 30 days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge, and

(b) is given as security for the same debt that is secured by the prior charge or any part of that debt, then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge does not operate nor is it valid unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

Effect on Enactments

254. Sections 250 to 253 do not affect any other enactment relating to the registration of charges.

Fluctuating Charges

255. (1) When a charge the particulars of which require registration under section 250 is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under paragraph (c) of subsection (1) of section 251 shall state the maximum sum that is deemed to be secured by the charge, which shall be the maximum covered by the stamp duty paid thereon and the charge is, subject to subsection (2), void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in section (1)

(a) any additional stamp duty is later paid on the charge, and

(b) at any time after that, but before the commencement of the winding-up of the company, amended particulars of the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration, then as from the date on which it is lodged, the charge, if otherwise valid, is effective to the extent of the increased maximum sum, except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

Charge on Acquisition of Property

256. (1) Where a company acquires any property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company shall within 28 days after the date on which the acquisition is completed, lodge with the Registrar for registration

(a) a statement of the particulars required by section 251 and of the date of the acquisition of the property, and

(b) the instrument by which the charge was created or is evidenced or a copy thereof, accompanied by a statutory declaration as required by section 250 and certified as provided in section 252.

(2) Failure to comply with subsection (1) does not affect the validity of the charge concerned.

Registration of Charges Duty to Register

257. (1) Documents and particulars required to be lodged for registration may,

(a) in the case of a requirement under section 250, be lodged by the company concerned or by any person interested in the documents, and

(b) in the case of a requirement under section 256, be lodged by the company concerned.

(2) A person not being the company concerned who lodges documents or particulars for registration pursuant to paragraph (a) of subsection (1) may recover from the company the amount of any fees properly payable on the registration if he meets the requirements of sections 250 to 253.

Register of Charges

258. **(1)*8 The Registrar shall keep a register of all the charges lodged for registration under this Division and enter in the register with respect to those charge the following particulars –

(a) in any case to which subsection (2) of section 251 applies, such particulars as are required to be contained in a statement lodged under that subsection;

(b) in any case to which section 256 applies, such particulars as are required to be contained in a statement lodged under paragraph (a) of subsection (1) of that subsection; and

(c) in any other case, such particulars as are required by section 251 to be contained in a statement lodged under that section.

(2) The Registrar shall issue a certificate of every registration, stating, if applicable, the amount secured by the charge, or, in a case referred to in section 255, the maximum amount secured by the charge, and the certificate is conclusive proof that the requirements as to registration have been complied with.

Endorsement on Debenture

259. (1) A company shall endorse on every debenture issued by it

(a) a copy of the certificate of registration of any charge related to the debenture; or

(b) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Subsection (1) does not apply to a debenture issued by a company before the charge was created in relation to the debenture.

Satisfaction and Payment

260. (1) Where, with respect to any registered charge,

(a) the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) the property or undertaking charged, or any part thereof, has been released from the charge, or has ceased to form part of the company’s property or undertaking, the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction, in whole or in part, or a memorandum of the fact that the property or undertaking, or any part thereof, has been released from the charge or has ceased to form part of the company’s property or undertaking, as the case may be, and the Registrar shall enter particulars of the memorandum in the register.

(2) The memorandum shall be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in subsection (1).

Rectification Of error

261. On being satisfied that the omission to register a charge within the time required, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum.

(a) was accidental or due to inadvertence or to some other sufficient cause,

(b) is not of a nature to affect adversely the position of creditors or shareholders, or

(c) that, on other grounds, it is just and equitable to grant relief, the court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court to be just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

*Retention of Copy**

262. (1) A company shall retain, at the registered office of the company, a copy of every instrument creating any charge that requires registration under this Division but, in the case of a series of debentures, the retention of a copy of one debenture of the series is sufficient for the purposes of this subsection.

(2) A company shall record all charges specifically affecting property of the company, and all floating charges on the undertaking or any property of the company, giving in each case a short description of the series is sufficient for the purpose charged, the amount of the charge and the names of the persons entitled thereto.

Inspection of Copies

263. The copies of instruments retained by the company pursuant to section 262 shall be kept open for the inspection of creditors and shareholders of the company, free of charge.

Registration of Receiver

264. (1) Where any person

(a) obtains an order for the appointment of a receiver of any of the property of a company, or

(b) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge, he shall give, within 10 days from the date of the order, appointment or entry into possession, notice thereof to the Registrar, who shall enter the fact in the register of the particulars of charges relating to the company.

(2) When a person who –

(a) has been appointed a receiver of the property of a company ceases to act as receiver, or

(b) had entered into possession of any property or a company goes out of possession of that property, he shall, within 10 days thereafter, give notice thereof in the prescribed form to the Registrar, who shall enter the notice in the register of the particulars of charges relating to the company.

Application of Division External Company

265. This Division applies to charges created or acquired after the commencement of this Act, by an external company, on property in the State in like manner and with like consequences as if the external company were a company as defined in section 543 whether or not the external company is registered under this Act pursuant to Division B of Part III.

Division B - TRUST DEEDS AND DEBENTURES

Definitions

266. In this Division

(a) “event of default” means an event specified in a trust deed on the occurrence of which

(i) a security interest constituted by the trust deed becomes enforceable, or

(ii) the principal, interest and other moneys payable there under become, or may be declared to be, payable before maturity; but the event is not an event of default until all conditions prescribed in the trust deed in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

(b) “trustee” means any person appointed as a trustee under the terms of a trust deed to which a company is a party, and includes any successor trustee;

(c) “trust deed” means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under this Act, under which the company issues debentures and in which a person is appointed as trustee for the holders of the debentures issued there under.

Application of Division

267. This Division applies to a trustee deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

Trustees Conflict of Interest

268. (1) No person may be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) There is a material conflict of interest for the purpose of subsection (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within 90 days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee shall

(a) eliminate the conflict of interest, or

(b) resign from office.

(4) A trust deed, any debentures issued there under and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(5) If the trustee is appointed contrary to subsection (1) or continues as a trustee contrary to subsection (3), any interested person may apply to the court for an order that the trustee be replaced and the court may make an order on such terms as it thinks fit.

List of Debentures Holders

269. (1) A holder of debentures issued under a trust deed may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out (a) the names and addresses of the registered holders of the outstanding debentures of the issuer;

(b) the principal amount of outstanding debentures owned by each such holder; and

(c) the aggregate principal amount of debentures outstanding, as shown in the records maintained by the trustee on the day that the statutory declaration is delivered to him.

(2) Upon the demand of a trustee, the issuer of debentures shall furnish the trustee with the information required to enable the trustee to comply with subsection (1)

(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection shall be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) shall state –

(a) the name and address of the person requiring the trustee to furnish the list, and, if the person is a body corporate, its address for service; and

(b) that the list will not be used except as permitted under subsection (5)

(5) A list obtained under this section shall not be used by any person except in connection with

(a) an effort to influence the voting of the debenture holders;

(b) an offer to acquire debentures

(c) any other matter relating to the debentures or the affairs of the issuer or guarantor thereof.

Evidence of Compliance

270. (1) An issuer or a guarantor of debentures issued or to be issued under a trust deed shall, before doing any act that is described in paragraph (a), (b) or (c) of this subsection, furnish the trustee with evidence of compliance with the conditions in the trust deed relating to –

(a) the issue, certification and delivery of debenture under the trust deed;

(b) the release, or release and substitution, of property that is subject to a security interest constitute by the trust deed; or

(c) the satisfaction and discharge of the trust deed.

(2) Upon the demand of a trustee, the issuer or guarantor of debentures issued or to be issued under a trust deed shall furnish the trustee with evidence of compliance with the trust deed by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Contents of Evidence

271. Evidence of compliance as required by section 270 shall consist of –

(a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;

(b) if the trust deed requires compliance with conditions that are subject to review by an attorney-at-law, his opinion that those conditions have been complied with; and

(c) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

Further Evidence

272. The evidence of compliance referred to in section 271 shall include a statement by the person giving the evidence

(a) declaring that he has read and understands the conditions of the trust deed described in section 270;

(b) describing the nature and scope of the examination or investigation upon which he based the certificate, statement or opinion; and

(c) declaring that he has made such examination or investigation as he believes necessary to enable him to make the statements or give the opinion contained or expressed therein.

Evidence relating To conditions

273. Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed shall furnish the trustee with evidence in such form as the trustee may require as to compliance with any condition of the trust deed relating to any action required or permitted to be taken by the issuer or guarantor under the trust deed.

Certificate of Compliance

274. At least once in every 12 month period beginning on the date of the trust deed and at any other time upon the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if no complied with, would, with the giving of notice, lapse of the time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of that failure.

Notice of Default

275. Within 30 days after a trustee under a trust deed becomes aware of an event of default there under, the trustee shall give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the debenture holders to withhold that notice and in writing so informs the issuer and guarantor.

Redemption of Debenture

276. (1) Debentures issued, pledged or deposited by a company are not redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled, agreement, may be re-issued, pledged or deposited to secure any obligation of the company then existing or thereafter incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

Duty of care

277. A trustee under a trust deed in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed, and

(b) exercise the care, diligence and skill of a reasonable prudent trustee.

Reliance on Statements

278. Notwithstanding section 277, a trustee is not liable if he relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

No exculpation

279. No term of a trust deed or of any agreement between a trustee and the holders of debentures issued there under, or between the trustee and the issuer or guarantor, operates to relieve a trustee from the duties imposed upon him by section 277.

Rights of Trustee

280. (1) The trustee under a trust deed holds all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him, in connection with the debentures covered by the trust deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned, except in so far as the trust deed otherwise provides.

(2) a debenture holder may

(a) sue the company that issued the debenture he holds for payment of any amount payable to him in respect of the debentures, or

(b) sue the trustee of the trust deed covering the debentures he holds for compensation for any breach of the duties that the trustee owes him, and in any such action it is not necessary for any debenture holders of the same class, or, if the action is brought against the company, the trustee under the covering trust deed, to be joined as a party.

(3) This section applies notwithstanding anything contained in a debenture trust deed or other instrument but a provision in a debenture or trust deed is valid and binding on all the debenture holders of the class concerned to the extent that, by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution, the provision enables a meeting of the debenture holders

(a) to release any trustee from liability from any breach of his duties to the debenture holders that he has already committed or generally from liability for all such breaches, without necessarily specifying them, upon his ceasing to be a trustee;

(b) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 287; or

(c) to consent to the substitution of debentures of debentures of a different class issued by the company or any other company or body corporate for the debentures of the debenture holders, or to consent to the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or nay other body corporate.

Trust Deeds

Need for trust Deed

281. (1) A public company shall, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company

(a) order the company to execute a trust deed in respect of those debentures;

(b) direct that a person nominated by the court be appointed a trustee of the trust deed, and

(c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

Kinds of Debentures

282. (1) Debentures belong to different classes if different rights attach to them in respect of

(a) the rate of interest or the dates for payment of interest;

(b) the dates when, or the installments by which, the principal of the debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;

(c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or

(d) the powers of the debenture holders to realize any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when

(a) any security interest is realized, or

(b) the company is wound-up.

That is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

Cover of Trust deed

283. A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Exception

284. Sections 281 to 283 do not apply to debentures issued before the commencement date, or to debentures forming part of a class of debentures some of which were issued before that date.

Contents of Trust deed

285. (1) Every trust deed, whether so required by section 281 or not, shall state.

(a) the maximum sum realisable by the company by issuing debentures of each specific issue;

(b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;

(c) the nature of any assets over which a security interest is created by the trust deed in favor of the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;

(d) the nature of any assets over which a security interest has been, or will be, created in favor of any person other than the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;

(e) whether the company has created or will have created any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;

(f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;

(g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;

(h) the dates on which interest kont eh debentures issued under the trust deed will be paid, and the manner in which payment will be made;

(i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal installments of principal in respect of teach debenture or by the section of debentures for redemption by the company, or by drawing, ballot or otherwise;

(j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;

(k) the circumstances in which the debenture holder will be entitled to realize any security interest vested in the trustee or nay other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;

(l) the power of the company and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustee to call meetings of the debenture holders;

(m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions and the procedures required to effect an alteration or an abrogation; and

(n) the amount or rate of remuneration payable to the trustee, the duration of payment and whether such payment will be in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document, or endorsed thereon and in applying that subsection, references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) does not apply if

(a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued, and

(b) the rights of the debenture holder cannot be altered or abrogated without his consent.

(4) This section does not apply to a trust deed executed or to debentures issued, before the commencement date.

Contents of Debentures

286. (1) Every debenture that is covered by a trust deed shall state either in the body of the debenture or in a note forming a part of the same document or endorsed thereon

(a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of subsection 285;

(b) whether the trustee of the covering trust deed holds the security interest vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and, if so, which debenture holders; and

(c) whether the debenture is secured by general floating charge vested in the trustee of the covering trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.

(3) This section does not apply to debentures issued before the commencement date.

Realisation of Security Equity

Realisation

287. (1) Debenture holders are entitled to realize any security interest vested in them or in any other person for their benefit, if

(a) the company fails, within one month after it becomes due, to pay

(i) any installment of interest,

(ii) the whole or part of the principal, or

(iii) any premium, owing under the debentures or the trust deed covering the debentures;

(b) the company fails to fulfill any of the obligations imposed on it by the debentures or the trust deed;

(c) any circumstances occur that by the terms of the debentures or trust deed entitled the holders of the debentures to realize their security interest; or

(d) the company goes into liquidation.

(2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person are additionally entitled to realise their security interest, if

(a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding-up of the company by order of any court of competent jurisdiction;

(b) the company ceases to pay its debts as they fall due;

(c) the company ceases to carry on business;

(d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of (i)debentures of the class held by the debenture holders who seek to enforce their security interest, and (ii)debentures whose holders rank before them for payment of principal or interest; or

(e) any circumstances occur that entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge, to realize their security interest.

(3) At any time after a class of debenture holders become entitled to realize their security interest, a receiver of any assets subject to such security interest or in favor of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed

(a) by a trustee;

(b) by the holders of debentures in respect of which there is owing more than half of the total amount in respect of all the debenture of the same class; or

(c) by the court on the application of any trustee or debenture holder of the class concerned.

(4) A receiver appointed pursuant to subsection (3) has, subject to any order made by the court, power

(a) to take possession of the assets that are subject to the security interest and to sell those assets, and

(b) if the security interest extends to that property,

(i) to collect debts owed to the company,

(ii) to enforce claims vested in the company,

(iii) to compromise, settle and enter into arrangements in respect of claims by or against the company,

(iv) to carry on the company's business with a view to selling it on most favorable terms,

(v) to grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks, and

(vi) to recover capital unpaid on the company's issued shares.

(5) This section applies to debentures issued before as well as after the commencement date.

And remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee under the trust deed or on the debenture holders by the debentures or the trust deed.

(6) Any power of remedy that is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security interest is exercisable on the occurrence of any of the events specified in subsection (1), or, in the case of a general floating charge, in subsections (1) and (2).

(7) A manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(9) No provision in any instrument is valid that purports to exclude or restrict the remedies given by this section.

DIVISION C - RECEIVERS AND RECEIVER-MANAGERS

Disqualified Receivers

288.

(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) or under any provision contained in a debenture or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment, or by the court but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the commencement date.

Functions of Receivers

289. 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 realize 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.

Functions of Receivers managers

290. 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.

Directors' Powers Stopped

291. 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 authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty under Court direction

292. A receiver or receiver-manager of a company appointed by the court shall act in accordance with the directors of the court.

Duty under Instrument

293. 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 295.

Duty of care

294. 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.

Directions by Court

295. 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.

Duties by Receivers, etc.

296. A receiver or receiver-manager of a company shall

(a) immediately give notice of his appointment to the Registrar, or 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 fro 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 15 days of the preparation of the financial statement or rendering of the final account, as the circumstances required.

Liability of Receivers, etc.

297. (1)* A receiver of assets of a company appointed under subsection (3) of section 287 or under the powers contained in any instrument.

(a) is personally liable on any account entered into by him in the performance of the 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 he 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 date, but does not apply to contracts entered into before that date.

Notice of Receivership

298. Where 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.

Floating charges Priorities

299. (1) Where a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or where 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 being wound up, the debts that in every winding up are under Part IV and any regulations made relating to preferential payments shall be paid in order of priority to all other debts shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or circumstances require, in priority to any claims 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.

Statement of Affairs

300. (1) Where a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 301 referred to as the “receiver”, is appointed under subsection (3) of section 287, 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 301

(a) the receiver shall forthwith end notice to the company of his appointment;

(b) within 14 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 301 as to the affairs of the company;

(c) the receiver shall, within two months after receipt of the statement, send

(i) to the 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) to the company a copy of his comments, or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) to the trustee of the trust deed, a copy of the statement and his comments, if any, and

(iv) to the 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

(a) within two months or such longer period as the court may allow, after the expiration of the period of 12 months from the date of his appointment, and after every subsequent period of 12 months, and

(b) within 2 months or such longer period as the court may allow after 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, and abstract in a form approved by the Registrar.

(3) The abstract shall show

(a) the receiver's receipts and payments during the period of 12 months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act, and

(b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the company is being wound up, this section and section 301 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

Contents of Statement

301. (1) The statement as to the affairs of a company required by section 300 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, and by the secretary of the company at that date, subject to the direction of the Registrar, by persons who

(a) are or have been officers of the company;

(b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) are in the employment of the company, or have been in the employment of the company within that year, and, in the opinion of the receiver, are capable of giving the information required; or

(d) are, or have been within that year officers of, or in the employment of, an affiliated company, who the receiver or his successor may require to submit and verify.

(3) 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.

DIVISION D - PROSPECTUSES

Interpretation Definitions

302. In this Division,

(a) "issue" includes circulate or distribute;

(b) "notice" includes circular or advertisement;

(c) "prospectus" includes, in relation to any company, any notice, prospectus, or other document that

(i) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or

(ii) offers to the public of subscription or purchase, directly or through other persons, any shares or debentures of the company or any units of any such share or debentures of the company.

Application of Division

303. This Division applies whether any shares or debentures of a company are offered to the public on, or with reference to, the promotion of a company, or at any time after the company has come into existence.

Prospective Requirements Prohibition

Regarding Issue

304. (1) Subject to subsection (2), no person shall public issue any form of application for shares or debentures unless.

(a) a prospectus, as required by this Division, has been registered with the Registrar, and

(b) a copy of the prospectus is issued with the form of application or the form specifies a place in the State where a copy of the prospectus can be obtained.

(2) Subsection (1) does not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

Contents of Prospectus

305. The following requirements apply to a prospectus –

(a) the prospectus shall be dated and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;

(b) one copy of the prospectus shall be lodged with the Registrar, and the prospectus shall state that a copy of the prospectus has been so lodged, and immediately thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;

(c) the prospectus shall contain a statement that no shares and debentures, or either, are to be allotted on the basis of the prospectus later than three months after the date of issue of the prospectus;

(d) the prospectus shall, if it contains any statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus.

(e) the prospectus shall disclose any commission payable by virtue of section 50; and

(f) the prospectus shall contain such other matters as are prescribed.

Professional Names

306. A prospectus shall not contain the name of any person as a trustee for holders of debentures or as an auditor, a banker, an attorney-at-law, or a stockbroker of the company or proposed company, or for shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in subsection (2) of section 506, has been lodged with the Registrar.

No waivers

307. A condition is void that

(a) purports to require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Division; or

(b) purports to affect the applicant with notice of nay contract, document or matter not specifically referred to in the prospectus.

Certain notice

308. (1) Subject to this section, no person Required.

(a) shall issue any notice that offers shares and debentures of a company, for subscription or purchase, or invites subscription for, or purchase of, any such shares or debentures;

(b) shall issue any notice that calls attention to

(i) an offer, or intended offer, for subscription or purchases, of shares or debentures of a company;

(ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures; or

(iii) a prospectus.

(2) This section does not apply to

(a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;

(b) a registered prospectus within the meaning of this Division;

(c) a notice

(i) that calls attention to a registered prospectus,

(ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus; and (iii) that contains no other information except that permitted pursuant to subsection (3); or

(d) a notice

(i) that accompanies a notice referred to in paragraph (c) or would, but for the inclusion therein of a statement referred to in subparagraph, be a notice so referred to,

(ii) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business.

(iii) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and

(iv) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) All or any of the following information is permitted for the purposes of subparagraph (iii) of paragraph (c) of subsection (2) -

(a) the number and description of the shares or debentures of the company to which the prospectus relates;

(b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;

(c) the general nature of the company's main business, or its proposed main business;

(d) the names, addresses and occupations of the directors of the company;

(e) the names and addresses of the brokers or underwriters, if any, to the issue of shares debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;

(f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;

(g) the particulars of the period during which the offer is effective.

(h) The particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section applies to any notice issued in the State by newspaper, or by radio or television broadcasting, or by cinematograph or any other means.

Responsibility Regarding Certificate

309. (1) Where a person issues a notice in contravention of section 308 and before doing so obtains a certificate that

(a) is signed by two directors of the company or two directors of the proposed company to which, or to the shares or debentures of which, the notice relates,

(b) specifies the names of the referred to at (a) directors, and of that company or of those proposed directors of that proposed company, and

(c) is to the effect that, by the operation of subsection (2) of section 308, this section does not apply to the notice, each person who signed the certificate is deemed to have issued the notice, and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

Evidence

310. In proceedings for a contravention of section 308 or 309 a certificate that purports to be a certificate under section 309 is prima facie proof.

(a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the company so named, or proposed directors of the proposed company so named, as the case may be;

(b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and

(c) that publication of the notice to which the certificate relates was authorized by those persons.

Registration of Prospectus

311. (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

(2) The Registrar may not register a copy of a prospectus unless

(a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company, or by his agent authorized in writing;

(b) the prospectus appears to comply with the requirements of this Act;

(c) There are also lodged with the Registrar copies of any consents required by section 313 to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of any such contract that is not reduced to writing, a memorandum giving full particulars of the contract; and

(d) The Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he shall give notice of that fact to the person, who lodged the prospectus, and give in the notice the reason for his refusal and if the Registrar registers a prospectus he shall give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effective.

(4) A person who lodged a prospectus with the Registrar may, within 30 days after he is notified of a refusal to register pursuant to subsection (3), require in writing that the Registrar refer the matter to the court; and the Registrar shall then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus, and, if the Registrar to register the prospectus, or it may uphold his decision to refuse registration.

(6) On the hearing under subsection (5), a party may be heard in person or be represented by an attorney-at-law.

Other Requirements

Prospectus presumed

312. (1) When a company allots or agrees to allot to any person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the document by which the offer of sale to the public, the document by which the offer of sale to the public is made is for all purposes deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses or otherwise relating to prospectuses, apply and have effect accordingly as if the shares or debentures had been offered to the public, and as if the persons accepting the offer in for them, but without affecting the liability, if any, of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a company was made with a view to the shares or debentures being offered for sale to the public, if

(a) The offer for sale of the shares or debentures, or of any of them, to the public was made within 6 months after the allotment or agreement to allot; or

(b) At the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to the prospectuses are to have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(4) In addition to complying with the other requirements of this Division, the document making the offer shall set out

(a) the net amount of the consideration received, of to be received, by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the shares or debentures have been or are to be allotted can be inspected.

(5) Where an offer to which this section relates is made by a company or firm, it is sufficient if the document making the offer is signed on behalf of the company or firm by two directors of the company, or not less than half the members of the firm, as the case may be; and a director or member may sign by his agent authorized in writing so to do.

Expert's Consent

313. (1) A prospectus that invites subscription for, or the purchase of shares or debentures of a company, and that includes a statement purporting to be made by an expert shall not be issued unless (a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and

(b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) A person is not to be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent requirement by this Division to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

Liability for Prospectus Claims*

Liability on prospectus

314. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who on the faith of a prospectus, subscribe for, or purchase any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the willful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material –

(a) a person who is a director of the company at the time of the issue of the prospectus;

(b) a person who authorized or caused himself to be named, and is named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;

(c) an incorporator of the company; or

(d) a person who authorized or caused the issued of the prospectus.

(2) Notwithstanding subsection (1) where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorized or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as a authorization by him of the issue of the prospectus.

(3) No person is liable under subsection (1) (a) who, having consented to become a director of the company, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;

(b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;

(c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or

(d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable grounds to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(4) No person is liable under subsection (1)

(a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement –

(i) was competent to make it; and

(ii) had given his consent as required under section 313 to the issue of the prospectus; and

(iii) had not withdrawn that consent before delivery of a copy of the prospectus for registration; and

(iv) to that person's knowledge, had not withdrawn that consent before allotment or sale under the prospectus; or

(b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, extract from, a public official document, it was a correct and fair representation of the statement or copy of, or extract from the document.

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 313, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 313 as a person who has authorized or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable.

(a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;

(b) if, after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) if he was competent to make the statement and had reasonable ground to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(7) When

(a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to its issue, or

(b) the consent of a person is required under section 313 to the issue of a prospectus and he wither has not given the consent or has withdrawn it before the issue of the prospectus, any person who authorized or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against my action or legal proceedings brought against his in respect thereof.

Subscription List and Minimum Subscription

Subscription Lists

315. (1) No allotment shall be made of any shares or debentures of a company in pursuance of a prospectus, ad no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after that on which the prospectus is first issued, or any such later time as is specified in the prospectus; and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

(2) An application for shares or debentures of a company made in pursuance of a prospectus is not revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) Although an allotment made in contravention of this section is void, it does not affect any allotment of the same shares or debentures later made to the same applicant.

(4) In reckoning for the purposes of this section the fifth day from another day, any intervening day that is a public holiday shall be disregarded and if the fifth day as so reckoned falls on a Saturday, Sunday, or public holiday, the first day thereafter that is not a Saturday, Sunday or public holiday is deemed to be the fifth day for those purposes.

Minimum Subscription

316. (1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus shall state the minimum amount of money required to be raised by the company by issuing the shares or debentures, in this Division, referred to as the "minimum subscription".

(2) No allotment shall be made of any shares or debentures of a company that are offered to the public unless

(a) the minimum subscription has been subscribed, and

(b) the sum payable on application for the shares or debentures has been received by the company; and, if a cheque for the sum payable has been received by the company, the sum is deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of 40 days after the first issue of the prospectus, all moneys received from the applications for any shares or debentures shall be forthwith repaid to them within 48 days after the issue of the prospectus, and the directors of the company are, subject to subsection (4), jointly and severally liable to repay that money with interest at the rate of 6 percent per annum from the expiration of the forty-eighth day.

(4) A director is not liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to any default or negligence on his part.

(5) A condition is void that purports to require or bind any applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subsection.

Escrow of Subsection Money

317. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public shall, until the allotment of the shares or debentures, be held by the company, or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant but there is no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank or person acts in good faith.

Remedial Actions

*__Rescission Of contract__

318. (1) a shareholder or a debenture holder may bring, against a company that has allotment shares or debentures under a prospectus, and action for the rescission of all allotments and the repayment to the shareholders or debenture holders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if

(a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or

(b) the prospectus did not contain a statement, report or account required under this act to be contained in it.

(2) In this section,

(a) “debenture holder” means a holder for the time being of any of the debentures allotted under the prospectus;

(b) “shareholder” means a holder for the time being of any of the shares allotted under the prospectus;

(3)* For the purposes of this section, a prospectus contains a material statement promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription and a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it doesn’t contain all the information required by this Act to be given.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(5) No action may be brought under this section more than 2 years after the first tissue of the prospectus under which shares or debentures were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) If judgment is given in favor of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotment to the plaintiff, or the person under whom he derives title, or to other persons, is void and judgment shall be entered in favor of all such persons for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold but if any shareholder or debenture holder at the date judgment is so entered signifies to the company.

(a)in writing;

(b) whether before or after the entry of judgment; that he waives his right to rescind the allotment of shares or debentures that he holds, he is deemed not to be included among the persons in whose favor judgment is entered.

(7) The operation of this section is not affected by the company’s being wound up or ceasing to pay its debts as they fall due and in the winding up of the company a repayment due under subsection (6) shall be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question

(a) in the case of a repayment in respect of shares, before repayment of the capital paid up on shares of the same class and before any accumulated or unpaid dividends or any premiums in respect of those shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes of shares; and

(b) in the case of a repayment in respect of debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.

(8) Subject to subsection (9), it is a defence to an action under this section for the company to prove that

(a) the plaintiff was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that knew of the omission from the prospectus of the matter of which he complains; or

(b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(9) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defense under subsection (8) against each of them; and in any case in which the company proves that it has a defense against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debenture holder of the same class as plaintiff.

(10) If a company would have a defense under subsection (8) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the company may bring an action against the allottee for an indemnity against any sun that the court orders it to pay to the plaintiff in the action.

(11) Subsections (8) and (10) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the company under subsection (6),

(a) with the substitution in subsection (8) of references to the shareholder or debenture holder for references to the plaintiff, and

(b) with the substitution in subsections (8) and (10) of references to a right for the company to have the judgment set aside in respect of the shares or debentures for references to a defense to the action.

(12) This section applies to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(13) This section applies to shares or debentures issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or debentures, whether with or without the payment of cash by or to the company, as thought the issue price of the shares or debentures offender for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash, if any, to be paid by the company.

(14) The rights conferred on shareholders and debentures holders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statements made negligently and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

319. (1) No allotment shall be made, on the basis of a prospectus, of any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

(2) Any allotment made in contravention of subsection (1) is void.

Statement in Lieu of Prospectus

320. A public company that does not issue a prospectus on, or with reference to, its formation may not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Division.

321. (1) To comply with the requirements of this Division, a statement in lieu of prospectus lodged by or on behalf of a company

(a) shall be signed by every person who is named therein as a director or a proposed director of the company, or by his agent authorized in writing,

(b) shall disclose any commission payable by virtue of section 50, and

(c) shall contain such matters as are prescribed.

(2) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Subsections (3) to (6) of section 311 apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

DIVISION E - INSIDER TRADING

“Insider” defined

322. In this Division, “insider” means, in respect of a company,

(a) a director or officer of the company;

(b) a company that purchases or otherwise acquires shares issued by it or nay of its affiliates,

(c) a person who beneficially owns more than 10 per cent of the shares of the company, or who exercises control or direction over more than 10 percent of the votes attached to shares of the company;

(d) an associate or affiliate of a person mentioned in paragraphs (a) to (c); and

(e) a person, whether or not he is employed by the company, who

(i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and

(ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph.

Presumed Insider

323. (1) For the purposes of this Division,

(a) a director or officer of a body corporate is an insider of the company;

(b) a director or officer of a body corporate that is a subsidiary is an insider of its holding company.

(2) For the purposes of this Division

(a) if a body corporate becomes an insider of a company, or enters into a business combination with a company, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 12 months or for such shorter period as he was a director or an officer of the body corporate; and

(b) if a company becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate is presumed to have been an insider of the company for the previous 12 months, or for such shorter period as he was a director or officer of the body corporate.

(3) In subsection (2), "business combination" means an acquisition of all or substantially all the property of one body corporate by another, or an amalgamation of 2 or more bodies corporate.

**324. An insider who, in connection with a transaction in a share or debenture of the company or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonable be expected to affect materially its value commits an offence and of reasonable diligence should have been known, to that person at the time of the transaction, and

(b) is accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Time limit On action

325. An action to enforce a right created by section 324 (a) or (b) may not be commenced except within 2 years after the discovery of the facts that gave rise to the cause of action.

PART III - OTHER REGISTERED COMPANIES

DIVISION A - COMPANIES WITHOUT SHARE CAPITAL

326. (1) This Division applies to every company without share capital, in this Act called, a “non-profit company”.

(2) When a provision of this Division is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Division in so far as it affects a non-profit company to which this Division applies, supersedes and prevails over the other provisions of this Act.

(3) For the avoidance of uncertainty, but subject to subsection (2), the following provisions of this Act apply, with such modifications as the circumstances of a non-profit company require, to such a company -

(a) the provisions of Divisions A, B, D, E,-F, G, H, I, K, and L of Part 1, and sections 31, 44, 45,-46 and 56 in that Part;

(b) the provisions of Divisions A, B and C of Part 11

(c) the provisions of Divisions B and C of this Part; and

(d) the provisions of Part IV and V.

“Member” defined

327. When used in relation to a non-profit company , "member" refers to a member of the non-profit company in accordance with the provision of this Act and the articles and by-laws of the company.

Incorporation

328. (1) Without the prior approval of the Attorney General, no articles shall be accepted for filing in respect of any non-profit company.

(2) In order to qualify for approval, a non-profit company shall restrict its business to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, or to the promotion of some other useful object.

Form of Articles

329. The articles of a non-profit company shall be in prescribed form, and, in additional, shall state

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

(b) that the company has no authorized share capital and is 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;

(c) if the-business of the company is 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 becomes a member of the company upon its incorporation.

Directors ex officio.

330. (1) A non-profit company shall have no fewer than three directors.

(2) The articles or by-laws of a non-profit company may provide for individuals becoming directors by virtue of holding some office outside the company.

“Incorporated or “inc” etc.

331. (1) Notwithstanding section 10, the word "incorporated" or "corporation" or the abbreviation "inc" or "corp" shall be the last word of the name of every non-profit company but a non-profit company may use and be legally designated by either the full or the abbreviated form.

(2) This section does not apply to a former Act company without share capital that is continued under this Act but this section a ' such company that changes its name by amended articles.

Members Unlimited

332. (1) Unless the articles or by-laws of a non-profit company otherwise provide, there is no limit on the number of members of the company.

(2) The articles or by-laws of a non-profit company may provide for more than one class of membership but, if they do so, they shall set forth the designation of, and the terms and conditions attached to, each class of members.

Admission to Membership

333. Subject to the articles or by-laws of a non-profit company, persons may be admitted to membership in the company by resolution of the directors but the articles or by-laws may provide

(a) that the resolution is not effective until confirmed by the members in a general meeting; and

(b) that members can be admitted by virtue of holding some office outside the company.

Voting by members

334. (1) Subject to subsection (2), each member of each class of members of a non-profit company has one vote.

(2) The articles of a non-profit company may provide that each member of a specified class has more than one vote, or has no vote.

Transfer of members

335. (1) Unless the articles of the company otherwise provide, the interest of a member in a non-profit company is not transferable, and lapses upon his death or when he ceases to be a member by resignation, or otherwise in accordance with the by-laws of the company.

(2) Where the articles of a non-profit company provide that the interest of a member in the company is transferable, the by-law may not restrict the transfer of that interest.

By laws

336. (1) The directors of a non-profit company may make by-laws, which are not contrary to this Act or to the articles of the company, respecting

(a) the admission of persons and unincorporated associations as members and as ex officio members, and the qualifications of, and the conditions of membership;

(b) the fees and dues of members;

(c) the issue of membership cards certificates;

(d) the suspension and termination of membership by the company and by a member;

(e) where the articles provide that the interest of a member is transferable, the method of transferring membership;

(f)the qualifications, remuneration of directors and the ex officio directors any; if any

(g) the time for, and manner of, election of directors;

(h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, if any, to be given by them to the company;

(i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirements as to proxies, and the procedure in all things at meetings of the members and of the board of directors; and

(j) the conduct in all other particulars of the affairs of the company.

(2) The directors of a non-profit company may make by-laws respecting

(a) the division of its members into groups, either territorially or on the basis of common interest;

(b) The election of some or all of the directors

(i) by the groups on the basis of the number of members in each group,

(ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or

(iii) by the groups on the basis of common interest;

(c) the election of delegates and alternative delegates to represent each group on the basis of the number of members in each group;

(d) the number and qualifications of delegates and the method of their election;

(e) the holding of meetings of members or delegates;

(f) the powers and authority of delegates at meetings; and

(g) the holding of meetings of members or delegates territorially or on the basis of common interest.

(3) A by-law passed under paragraph (f) of subsection (2) may provide that a meeting of delegates for all purposes is a meeting of the members with all the powers of such a meeting.

(4) A by-law under subsection (2) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(5) A delegate has only one vote and may not vote by proxy.

(6) A by-law passed under subsection (2) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

Dissolution and distribution

337. (1) The articles of incorporation' of a non-profit company may provide that, upon dissolution, the remaining property of the company is to be distributed among the members, or among the members of a class or classes of members, or to one designated organisation or more, or to any combination thereof.

(2) Where the articles of incorporation of a non-profit company do not provide for a distribution of its remaining property in accordance with subsection (1), the company shall by, special resolution, after payment of all debts and liabilities distribute or dispose of the remaining property to any organization in the State the business of which is charitable or beneficial to the community.

(3) Where the articles of incorporation do not contain a provision for the distribution of remaining property to the members, the articles may not peg amended so to provide.

DIVISION B - EXTERNAL COMPANIES

External Companies Carrying on Business

338. An external company carries on business within the State.

(a) if the business of the company is regularly transacted- from an office in the state established or used for the purpose;

(b) if the company establishes or uses a share transfer or share registration office in the State;

(c) if the company owns, possesses or uses assets situated in the State for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realized the State or not;

Exceptions

339. This Division does not apply to an external company that is exempted from this Division by Order of the Minister responsible for Legal Affairs published in the Gazette.

Prohibition

340. (1) No external company shall begin or carry on business in the State until it is registered under this Act.

(2) Every external company carrying on business in the State immediately before the commencement date shall, within 12 months after that date apply to the Registrar for registration under this Act.

(3) An external company whose name does not appear on the register maintained by the Registrar pursuant to section 494 is presumed not to be registered under this Act.

(4) Until the expiration of 12 months from the commencement date, subsection (1) shall not apply to an external company that was carrying on business in the State on that date.

Registration Required

341. (1) Subject to subsection (2) and to sections 515 and 516 an external company, upon payment of the prescribed fee, is entitled to be registered under this Act for any lawful business.

(2) An application for registration under this Act by an external company may be referred by the Registrar to the Minister, who may order the Registrar to refuse registration.

Restrictions on activities

342. (1) In the prescribed circumstances, the Registrar may restrict the powers or activities that an external company may exercise or carry on in the State.

(2) When any powers or activities of an external company are restricted under subsection (1), the company shall not exercise those powers or carry on those activities in the State.

(3) Where any powers or activities of an external company are to be restricted pursuant to subsection (1)

(a) the Registrar shall notify the company of his intention;

(b) the company may appeal to the Minister within 30 days from the date of receipt of such notification; and

(c) the Minister may confirm, vary or overrule the decision of the Registrar.

External amalgamated

343. An external company continuing from the amalgamation of two or more external companies shall comply with section 346 as though it were newly registered irrespective of the fact that one or more of such companies continued by the amalgamated company registered under this Act at the date of amalgamation or thereafter.

Registering External Companies

344. (1) In order to register under this Act, an external company shall file with the Registrar a statement in the prescribed form setting out

(a) the name of the company;

(b) the jurisdiction within which the company was incorporated;

(c) the date of its incorporation;

(d) the manner in which it was incorporated;

(e) the particulars of its corporate instruments,

(f) the period, if any, fixed by its corporate instruments for the duration of the company;

(g) the extent, if any, to which the liability of the shareholders or members of the company is limited;

(h) the business that the company will carry on in the State;

(i) the date on which the company intends to commence any of its business in the State;

(j) the authorized, subscribed and paid-up or stated capital of the company, and the shares that the company is authorized to issue and their nominal or par value, if any;

(k) the full address of the registered or head office of the company outside of State;

(1) the full address of the principal office of the company in the State; and

(m) the full names, addresses and occupations of the directors of the company.

(2) The statement under subsection (1) shall be accompanied by

(a) a statutory declaration by a director of the company that verifies on behalf of the company the particulars set out in the statement;

(b) a copy of the corporate instruments of the company;

(c) a statutory declaration by an attorney-at-law that this section has been complied with;

(d) the prescribed fees; and

(e) a power of attorney in accordance with section 346.

(3) The Registrar may accept the declaration referred to in paragraph (c) of subsection (2) as sufficient evidence of compliance with the requirements of this section.

Language

345. When a document that is required to be filed under section 344 is not in the English language, a notarily certified translation of that document shall be provided unless the Registrar otherwise directs.

Attorney of Company

346. (1) An external company shall file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in the State to act as the attorney of the company for the purpose of receiving service of process in all suits and proceedings by or against the company in the State and for receiving all lawful notices.

(2) A power of attorney under subsection (1) shall declare that service of process in respect of suits and proceedings by or against the company and of lawful notices on the attorney will be binding on the company for all purposes:

(3) An external company may, by power of attorney executed and deposited in accordance with this subsection

(a) appoint are attorney in the State for the purposes set forth in the power, and

(b) replace the attorney previously appointed pursuant to this section.

Failure of Power

347. If an attorney named in a power of attorney executed by an external company under section 346 ceases to reside in the State or if the power of attorney becomes invalid or ineffectual for any other reason, the company shall file a power of attorney pursuant to sub-section (3)(b) of section 346.

Capacity of Attorney

348. (1) Service of process and notices on an attorney for an external company appointed under a power of attorney registered under section 346 is legal and binding service on the company.

(2) When an attorney for an external company appointed under a power registered under section 346 signs a deed on behalf of the company, the deed is binding on the company in the State if the company has empowered the attorney to execute deeds and he executes it with the attorney's own seal.

(3) A deed that is binding under subsection (2) on an external company has the same effect as if it were under the seal of the external company.

Certificate of Registration

349. (1) When the Registrar has, in respect of an external company, received the statements and other documents required under this Act together with the prescribed fees, the Registrar shall issue certificate showing that the company has been registered as an external company under this Act but subject to his discretionary powers under this Division.

(2) A certificate of registration issued under this section to an external company is conclusive proof of the registration of the company on the date shown in the certificate and of any other facts that the certificate purports to certify.

Effect of Registration

350. Subject to this Division and any other laws of St. Vincent and the Grenadines an external company that is registered under this Act may carry on its business in the State in accordance with its certificate of registration and may exercise its corporate powers within the State:

Suspension of Registration

351. (1) Subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of this Division, or for any other prescribed cause and the Minister may, subject to those regulations, remove a suspension or cancel a revocation.

(2) The rights of the creditors of an external company are not affected by the suspension or revocation of its registration under this Act.

352. (1) When an external company ceases to carry on its business in the State, the company shall file a notice to that effect with the Registrar, who shall thereupon cancel the registration of the company under this Act.

(2) If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under this Act.

Revival of Registration

353. (1) Where the registration of an external company has been cancelled under section 352, the Registrar may revive the registration of the external company under this Act if the company files with him such documents as he may require and pays the prescribed fee.

(2) A registration of an external company is revived when the Registrar issues a new certificate of registration to the company.

Previous Activities

354. Registration Or revival of registration under this Act of an external company retroactively authorizes all previous acts of the company as though the company had been registered at the time of those acts, except for the purposes of a prosecution for any offence under this Division.

Fundamental Changes

355. (1) Where, in the case of an external company registered under this Act,

(a) the name of the company has been changed;

(b) the corporate instruments of the company have been altered to reflect a fundamental change within the meaning of Division K of Part 1;

(c) the objects of the company have been altered or its business has been restricted; or

(d) any change is made among its directors, the company shall, within 30 days after the change has been made, file with. the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee; the Registrar shall enter the change in the register, and, with the approval of the Minister, enter a record of such other changes in the register as he considers to be in the public interest.

(3) The registration of an external company under this Act ceases to be valid 60 days after a change described in subsection (1) is made or order unless within that period the change is filed with the Registrar pursuant to subsection (1).

**(4)* Upon the registration under this section of a change in respect of an external company, the Registrar shall issue to the company a certificate of the change under his hand in a form adapted to the circumstances.

(5) A certificate issued under subsection (4) is admissible in evidence as conclusive proof of the change therein set out.

Returns

356. (1) An external company shall, not later than the first day of April in each year after the date of its registration, send to the Registrar a duly executed annual return in the prescribed form required made up to the preceding thirty-first day of December and accompanied by such documents and fees as may be prescribed.

(2) A director or officer of the external company shall certify the contents of any return made under this section.

(3) The Registrar may strike off the register an external company that neglects or refuses to file a return required under this section.

Incapacity of Company

357. (1) An external company that is not registered under this Act may not within the state maintain any action, suit or other proceeding in any court in respect of any contract made in whole or m part the State in the course of, or in connection with, the carrying on of any business by the company in the State.

(2) Notwithstanding subsection (1), when an external company described in that subsection becomes registered under this Act or has its registration restored, as the case may be, the company may then maintain an action, suit or other proceeding in respect of a contract described in subsection (1) as though the company had never been disabled under that subsection, whether or not the contract was made or proceeding instituted by the company before the date the company was registered or had its registration restored.

(3) In the case of an external company whose registration has been restored, subsection (2) is subject to the terms of any conditions imposed upon the company, or to the terms of any order of the court in respect of the restoration of the company's registration.

(4) Where an assignment of a debt or any chose in action is made by an external company described in subsection (1) to an individual or to a body corporate having the capacity to maintain any action, suit or other proceeding in a court in the State.

(a) that individual or body corporate, or

(b) any person claiming under the individual or body corporate, may not maintain, in any court in the State any action, suit or other proceeding that is based on the subject of the assignment unless the external company is registered under this Act during the time the action, suit or other proceeding is being proceeded with.

(5) Subsection (4) does not apply in respect of an external company that is a judgment creditor applying to have a judgment registered in the Supreme Court under the Reciprocal Enforcement of Judgments Act.

Resumption of Action

358. Where an action, suit or proceeding has been dismissed or otherwise decided against an external company on the ground that an act or transaction of the company was invalid or prohibited by reason of the company's not being registered under this Act, the company may, when it becomes registered under this Act, and upon such terms as to costs as the court may order, maintain a new action, suit or other proceeding as if no judgment had been given or entered.

Other Provisions

359. The provisions of sections 18 to 23, 515 and 516 and the provisions of Divisions B to E of Part II and Division of Part V apply mutatis mutandis to external companies.

DIVISION C - FORMER ACT COMPANIES

360. (1) Upon the commencement date

(a) all corporate instruments of a former Act company, and

(b) all cancellations, suspensions, proceedings, acts, registrations and things, lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect as though they had been lawfully done under this Act.

(2) For the purpose of this section, “lawfully done” means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

361. (1) Notwithstanding any other provision of) this Act, but subject to subsection (3), if any provision of a corporate instrument of a former Act company lawfully in force immediately before the commencement date is inconsistent with, repugnant to or not in compliance with, this Act, that provision is not illegal or invalid only by reason of that inconsistency, repugnancy or non-compliance.

(2) Any act, matter or proceeding or thing done or taken by the former Act company or any director, shareholder, member or officer of the company under a provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection, or by reason of being prohibited or not authorized by the law as it is after the commencement date.

(3) Section 97 applies to a former Act company immediately upon the commencement date.

362. (1) Every former Act company shall, within 2 ~, years after the commencement date, apply to the Registrar for a certificate of continuance under this Act.

(2) No fee in excess of $ 50 to defray administration costs may be prescribed in respect of an application and certificate of continuance under this Division.

Amending Instruction

363. Within the period referred to in section 362, any amendments,. to, or replacement of, the corporate instruments of a former Act company shall be made as nearly as possible in accordance with this Act.

Articles of Continuation

364. (1) Articles of continuance may, without so stating in the articles, effect any amendment to the corporate instruments of a former Act company if he amendment is an amendment that a company incorporated under this Act can make in its articles.

(2) Articles of continuance in the prescribed form shall be sent to the Registrar together with the documents required by sections 69 and 176.

(3) A shareholder or member may not dissent under section 226 in respect of an amendment made under subsection (1).

Certificate of Continuance

365. (1) Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, the Registrar shall issue a certificate of continuance to the former Act company, in accordance with section 503.

(2) On the date shown in the certificate of continuance

(a) the former Act company becomes a company to which this Act applies as if it had been incorporated under this Act;

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

(c) except for the purposes of subsection (1) of section 6 5 , the certificate of continuance is the certificate of incorporation of the continued company.

Preservation of company

366. (1) When a former Act company is continued as a company under this Act

(a) the property of the former Act company continues to be the property of the company;

(b) the company continues to be Ti<able for the obligations of the former Act company;

(c) an existing cause of action, claim or liability to prosecute is unaffected;

(d) a civil, criminal or administrative action or proceeding pending by or against the former Act company may be continued by or against the company; and

(e) a conviction against, or ruling, order or judgment in favor of or against, the former Act company may be enforced by or against the company.

(2) When the Registrar determine, on the application of a former Act company, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the former Act company was authorized to issue before it was continued as a company under this Act, the Registrar may, notwithstanding section 26, permit the company to continue to refer in its articles to those shares, whether issued as shares having a nominal or par value.

(3) A company shall set out in its articles the maximum number of shares of a class or series referred to in subsection (2) and it may not amend its articles to increase that maximum number of shares or to change the nominal or par value of the shares.

Previous shares

367. (1) A share of a former Act company issued before the company was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the articles of continuance, irrespective of whether the share is fully paid, and irrespective of any designation, rights, privileges, restrictions or conditions attached to the share, or set out on, or referred to in, the certificate representing the share and continuance under this Act does not deprive a shareholder of any right or privilege that he claims under an issued share of the company, nor does it relieve him of any liability in respect of an issued share of the company.

(2) For the purposes of this section, "share" includes an instrument issued pursuant to subsection (1) of section 35.

Continuance Not applied For within Prescribed Time

368. (1) Subject to this section, a former Act company that does not apply to the Registrar for a certificate of continuance within the time limited there for by section 362 shall, on the expiration of the time so limited be deemed to be continued under this Act and the model by-law set out in any Regulations made shall apply.

(2) The court may, on the application of a company deemed to be continued pursuant to subsection (1) or of the Registrar, make such order as it thinks fit for the purpose of securing the company's full compliance with this Act or otherwise in respect of its continuance under this Act.

(3) Where a company makes an application under this section it shall give the Registrar notice thereof, and where the Registrar is the applicant under this section he shall give the company notice thereof and on any application the company and the Registrar are entitled to appear and be heard in person or by an attorney-at-law.

(4) The cost of an application under this section shall, unless the court otherwise orders, be paid by the company.

Effects of Earlier References

369. (1) A reference in any corporate instrument of any body corporate to the former Act or any procedure under the former Act is, in relation to any former Act company continued under this Act, to be construed as a reference to the provisions of this Act or procedure there under that is the equivalent provision or procedure under this Act.

(2) Without affecting the operation of the Interpretation and General Provisions Act, when there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepealed to the extent necessary to give effect to that reference in the corporate instrument.

PART IV - WINDING UP

DIVISION A - Preliminary

Modes of Winding Up

370. (1) The winding up of a company may be either

(a) by the court; or

(b) voluntary.

(2) The provisions of this Act with respect to winding up apply; unless the, contrary intention appears, to the winding up of a company in either of those modes.

Liability of Members

371. (1) Subject to this section, in the event of a company being wound up every present or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up, and the adjustment of the rights of the members and past members among themselves.

(2) Subsection (1) is subject to the following limitations -

(a) a past member is not liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up;

(b) a past member is not liable to contribute ' unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;

(c) no contribution is required from any member or past member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member, or, as the case may be, the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(d) any sum due from the company to a member or past member, in his character of member, by way of dividend or otherwise, shall not be set-off against the amounts for which he is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(3) "Member" in relation to a company means an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company's register of members and for the purposes of subsections (1) and (2) "past member" includes the estate of a deceased member and, where any person dies after becoming liable as a member or past member, the liability is enforceable against his estate.

(4) Except as provided in subsections (1) to (3), a member or past member of a company is not liable as such for any of the debts or liabilities of the company.

(5) In the event of a company being wound up any part of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment has occurred.

Saving

372. Nothing in this Act shall invalidate any provision contained in any policy of insurance other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract.

Definition of Contributory

373. The term "contributory" means ever person liable to contribute to the assets of a company in the event of it wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of Liability of Contributory

374. The liability of a contributory creates a debt in the nature of a specialty accruing due from the contributory at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability. Contributories

In case of death Of member

375. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment of the money due.

Contributories In case of Bankruptcy of Members

376. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

DIVISION B - WINDING UP BY THE COURT

Circumstances In which company May be wound Up be court

377. A company may be wound up by the Court if the company has by special resolution resolved that the company be wound up by the Court;

(a) the company has by special resolution resolved that the company be wound up by the Court;

(b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(c) the company is unable to pay its debts;

(d) an inspector appointed under Division B of Part V has reported that he is of the opinion

(i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or

(e) the Court is of the opinion that it is just and equitable that the company should be wound up.

Definition of Inability To pay debts

378. (1) A company is deemed to be unable to pay its debts if -

(a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five thousand dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand or under the hand of his lawfully authorized agent requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the court that the company is unable to pay its debts as they become due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The sum for the time being specified in subsection (1) (a) is subject to increase or reduction by regulation under section 527.

Petition for Winding up

379. (1) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of the section, either by

(a) the company;

(b) a creditor, including a contingent prospective creditor, of the company;

(c) a contributory; or

(d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory; or any two or more of those parties.

(2) Notwithstanding anything in subsection (1) –

(a) a contributory is not entitled to present a winding-up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) the court shall not hear a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(3) Where a company is being wound up voluntarily, a winding-up petition may be presented by the Official Receiver as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

A contributory is entitled to present a winding-up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

Powers of court on hearing petition

380. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion-

(a) that the petitioners are entitled to relief either by winding up the company or by some other means; and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding-up order, unless it is also of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay Or restrain Proceedings Against company

381. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may, where any action or proceeding is pending against the company, apply to the court to stay or restrain further proceedings, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, etc. after commence-ment of Winding up

382. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding-up, is, unless the court otherwise orders, void.

Avoidance of Attachments, etc.

383. Where any company is being wound up by the etc. court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

Commencement Of winding up By the court

383. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for Voluntary winding up, the winding up of the company is deemed "to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up. Statement of company's affairs.

Copy of order to be forwarded to Registrar

385. (1) On the making of a winding up order, a copy of the order shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry thereof in his records relating to the company.

(2) If default is made in lodging a copy of a winding-up order with the Registrar as required by subsection (1), every officer of the company or other person who knowingly authorizes or permits the default commits an offence.

Actions stayed On winding-up Order

386. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of Winding up Order

387. An order for winding up a company shall operate in favor of all the creditors and of all the contributories of the company, as if made on the joint petition of a creditor and of a contributory.

Official Receiver

Meaning of Official Receiver

388. For the purpose of this Act, "Official Receiver" means the Official Receiver attached to the court for bankruptcy purposes, and includes any assistant Official Receiver.

Statement of Company's Affairs

389. (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court otherwise orders, be made out and submitted to the Official Receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the- names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or by such persons

(a) who are or have been officers, other than employees, of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required; and

(d) who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates, as the official Receiver, subject to the direction of the court, may require to submit and verify the statement.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official Receiver or the court may for special reasons allow.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver considers reasonable, subject to an appeal to the court.

(5) Any person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence.

(6) Any person stating himself in writing to be a creditor or contributory of the company is entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully stating himself to be a creditor or contributory in a contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding-up order.

Report by Official Receiver

390. (1) In a case where a winding-up order is made the Official Receiver shall, as soon as practicable a after receipt of the statement to be submitted under section 389, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

(a) as to the amount of capital issued, and subscribed, and the estimated amount of assets and liabilities;

(b) of the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Power of Court to appoint liquidators

391. For the purposes of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and Powers of Provisional Liquidator

392. (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition, and either the official Receiver or any other fit person may be appointed.

(2) Where a liquidator is previously appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, Style, etc. of Liquidators

393. Subject to subsection (2) of section 392 the following provisions with respect to liquidators have effect on a winding-up order being made -

(a) the official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) the official Receiver shall summon separate meetings of the creditors and contributories of the company for the purposes of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any such matter, the court shall decide the difference and make such order thereon court may think fit;

(d) in a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company;

(e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy; and

(f) a liquidator shall be described, where a person other than the official Receiver is liquidator, by the style of "the liquidator" and, where the official Receiver is liquidator, by the style of "the Official Receiver and Liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

Provisions where Person other Than official Receiver is Appointed Liquidator

394. (1) Where in the winding-up of a company by the court a person other than the official Receiver is appointed liquidator, that person

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in such manner as the court may direct; and

(b) shall give the official Receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling the official Receiver to perform his duties under this Act.

(2) If a liquidator contravenes paragraph (b) of subsection (1) he commits an offence.

General Provisions as to liquidators

395. (1) A liquidator appointed by the court may resign or, on cause shown be removed by the court.

(2) Where a person other than the official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to this Act, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of Company's Property

396. Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Vesting of Property of Company in Liquidator

397. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator 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 that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

Powers of Liquidator

398. (1) The liquidator in a winding up by the court may with the sanction either of the court or of the committee of inspection-

(a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) carry on the business of the company, so far as may be necessary, for the beneficial winding up thereof;

(c) appoint an attorney-at-law or other agent to assist him in the performance of his duties;

(d) pay any classes of creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;

(e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(f) compromise any calls and liabilities to calls, debts and liabilities capable or resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court may

(a) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;

(b) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and receive dividends therefrom in respect of such balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;

(d) 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 liability of the company 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;

(e) raise on the security of the assets of the company any money requisite;

(f) take out in his official name letters of administration to any deceased contributory, and do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator himself.

(g) appoint an agent to do any business which the liquidator is unable to do himself; and

(h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Exercise and Control of Liquidator's Powers

399. (1) Subject to this Part, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the court in the prescribed manner for directions in relation to any particular matter arising under the winding up_

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks fit.

Books to be kept by liquidator

400. (1) Every liquidator of a company which is being wound up by the court shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books and make copies thereof or extracts therefrom.

(2) If a liquidator fails to keep proper books as required by subsection (1) or refuses to allow any inspection permitted thereby, he commits an offence.

Payments of Liquidator into Bank

401. (1) Every liquidator of a company which is being wound up by the court shall pay the money received by him into such bank as the court may direct.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding two hundred dollars, or such other mount as the court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

(4) A liquidator who contravenes the provisions of subsection (3) commits an offence.

Audit of Liquidator's Accounts

402. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by an affidavit or a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited by an auditor eligible for appointment as auditor of a company under section 158 and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as the he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor or any person interested.

(5) If a liquidator fails to comply with any of the duties imposed on him by this section he commits an offence.

Control of Registrar over Liquidators

403. (1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged and may, if the Registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the liquidator.

Release of Liquidator

404. **(1)* When the liquidator of a company which is being wound up by the court has realized all the assets of the company, or so much thereof as can, in his opinion be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Registrar shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Registrar, shall take into consideration the report, and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

(2) Where the release of a liquidator is withheld, the court may, on application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Registrar releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Committees of Inspection Meetings To determine Appointment Committee of Inspection etc.

405. (1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than the Official Receiver, to determine

(a) whether or not an application is to be made to the court for the appointment of

(b) who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determination of the meetings of the creditors and contributories the court shall decide the difference and make such order as the court thinks fit.

Constitution and proceedings of committee of inspection

406. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as is agreed on by the meetings of the creditors and contributories, or as, in the case of a difference, may be determined by the court.

(2) The committee shall meet at such time as they from time to time appoint, and, failing such appointment, at least once a month and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice iii writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by ordinary resolution at a meeting of creditors, if represents creditors, or of contributories, if represents contributories of which seven days' notice has been given, stating the object of the meeting

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy but if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Court where No committee of Inspection

407. Where in the case of a winding up there is no committee of inspection, the court may on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

General Powers of court Power to stay Winding-up, Etc.

408. (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the Official Receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, at any time after an order for winding up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up ordered by the court, shall be conducted as a creditors' voluntary winding up.

(3) On any application under subsection (1) the court may, before making an order, require the official Receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his records relating to the company.

(5) If default is made in lodging a copy of an order made under this section with the Registrar as required by subsection (4), every officer of the company or other person who knowingly authorizes or permits the default commits an offence.

Settlement of List of contribu-tories and application of assets

409. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

**(2) Notwithstanding subsection (1), where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories when settled shall be prima facie evidence of the liabilities of the persons named therein as contributories.

Delivery of Property to Liquidator

410. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any assets or books and papers in his hands to which the company is prima facie entitled.

Payment of Debts due by Contributory to Company and Extent to which Set-off Allowed

Power of court To make calls

411. (1) The court may, at any time after making a winding-up order, make an order directing any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any company, when all the creditors are paid in full, any money due on account to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

412. (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into Bank of moneys

Due to company

413. (1) The court may order any contributory, purchaser or other person from whom money is due to the 'company to pay the amount due into a bank to the account of the liquidator instead of to the liquidator in person, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on Contributory is Conclusive Evidence

414. An order made by the court on a contributory is, subject to any right of appeal, conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shalL be taken to be truly stated as against all persons and in all proceedings.

Appointment of Special manager

415. (1) Where in any proceedings the official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on the application appoint a special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to Exclude Creditors not Proving in time

416. The court may fix a time or times within which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of Rights of Contributories

417. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of Books by Creditors or Contributories

418. (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government Department or a person under the authority of a Government Department or the Minister.

Power to order costs of wind-ing up * paid out of assets

419. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the cost, charges, and expenses incurred in the winding sp in such order of priority as the court thinks fit.

Power to summon persons suspected of having property of company

420. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in h ,-s possession any property of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters mentioned in subsection (1), either by word of mouth or on written interrogatories, and reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The court require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Power to order Public examination of promoters Directors, etc.

421. (1) Where an order has been made for winding up a company by the court, and the Official Receiver promoters has made a further report under this Act stating that in his opinion a fraud or improper conduct has been committed, or engaged in, by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that the person or officer or any other person who was previously an officer of the company, including any banker, attorney-at-law or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person who the court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or, formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as officer thereof.

(2) The Official Receiver shall take part in the examination, and for that purpose may, if specially authoriZed by the court in that behalf, employ an attorney-at-law.

(3) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by attorney-at-law.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath and is not excused from answering any questions put to him on the ground that the answer might tend to incriminate him but, where he claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (10) or in relation to a charge of perjury in respect of the answer.

(6) A person ordered to be examined shall at his own cost, before his examination, be furnished with a copy of the official Receiver's report, and may at his own cost employ an attorney-at-law who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) When a person directed to attend before the court under subsection (1) applies to the court to be exculpated from any charges made or suggested against him, the Official Receiver shall appear on the hearing of the application and call the attention of the court to any matters which appear to the Official Receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(8) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The court may, if it thinks fit, adjourn the examination from time to time.

(10) Any person being examined under this section who makes a statement that is false or misleading in a material particular is guilty of an offence.

(11) For the purposes of this section, conduct is improper if it is of such a nature as to render a person unfit to be concerned in the management of a company.

***Power to arrest Absconding Contributory**

422. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit St. Vincent and the Grenadines or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order.

Powers of Court Cumulative

423. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to Liquidator of Certain powers Of court

424. Provision may be made by rules made under section 486 for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of the following matters-

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivering, conveyance, surrender or transfer of any money, property, books or papers to the liquidator,

(d) the making of calls and the adjusting of the rights of contributories; and the fixing of the time within which debts and claims shall be proved, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court but the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of Company

425. (1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within fourteen days from the date thereof be lodged by the liquidator with the Registrar who shall enter in his records a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he is guilty of an offence.

Power to enforce Orders and Appeals from Orders

426. (1) Orders made b y the court under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court.

DIVISION C - VOLUNTARY WINDING UP

Winding-up Resolutions

427. (1) A company shall be wound up voluntarily is: -

(a) a general meeting so resolves by special resolution; or

(b) a general meeting so resolve by an ordinary resolution which states that the company is unable to pay its debts. In this Act, "a resolution for voluntary winding up" means a resolution passed under subsection (1).

Notice of Resolution To wind up Voluntarily

428. (1) When a company has passed a resolution for voluntary winding up, it shall within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette and in writing to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company n default is guilty of an offence.

Commencement ofVoluntary Winding up

429. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up.

Effect of Voluntary Winding up on Business and Status of from the Company

430. In case of a voluntary winding up, the company shall, commencement of the winding up cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial winding up thereof but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles of incorporation, continue until it is dissolved.

Avoidance Of transfers, Etc. after Commencement Of voluntary Winding up

431. Any transfer of shares not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, is void.

Statutory Declaration Of solvency In case of Proposal of Winding up Voluntarily

432. (1) Where it is proposed to wind up a company voluntarily, a director or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless-

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is lodged with the Registrar for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration is guilty of an offence.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a member's voluntary winding up", and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

Provisions Applicable Only To members' Voluntary Winding Up

Power of Company to Appoint and Fix remunaration of Liquidators

433. (1) The company in general meeting shall appoint one, or more than one, liquidator for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) Subject to subsections (3) and (4), the company may by special resolution remove a liquidator and appoint another liquidator, but the removal appointment does not have effect -

(a) until after the expiration of the period of fourteen days after the date on which the resolution is passed; or

if, within that period an application is made to the court under subsection (4), unless the Court dismisses the application or the application is withdrawn.

(3) In addition to the other requirements of this Act with respect to the giving of notice of meetings, the company shall give to all creditors and contributories of the company notice of any meeting at which a to resolution under subsection (2) will be proposed, giving in the notice particulars of the proposals.

(4) A creditor or contributory of the company may, within the period of fourteen days after the date on which a resolution under subsection (2) is passed, apply to the Court for an order cancelling the resolution and the Court may, if it is satisfied that it is fair and reasonable to do so, allow the application, but if not so satisfied shall dismiss the application.

(5) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator, sanctions the continuance thereof.

Power to fill Vacancy in Office of Liquidator

434. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the by-laws or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Powers of liquidator to accept shares, etc., as consideration for sale of property of company

435. (1) Where a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to a corporation, (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the Companies transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company, and where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of any such sale or arrangement consists of fully paid shares in the transferee company each such member is deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he is entitled under the distribution referred to in subsection (1).

(3) If any member of the transferor company who did not vote in favor of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by the Arbitration Act.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by the Court, the special resolution is not valid unless sanctioned by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency

436. (1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is :,t any time of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 432, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) Unless the meeting of creditors resolve that the winding up shall continue as a members' voluntary winding up, the winding up shall as from the date when the liquidator calls the meeting of creditors become a creditors voluntary winding up, and the Meeting of creditors shall have the same powers as a meeting of creditors held under section 442.

(3) If the liquidator fails to comply with subsection (i) he is guilty of an offence.

Duty of liquidator to call general meeting at end of each year

437. (1) Subject to section 439, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting Of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of

the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with subsection (1) he is guilty of an offence

438. (1) Subject to section 439, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and shall cause the account to be audited and when that has been done shall call a general meeting of the company for the purpose of laying before it the audited account and giving any necessary explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette and in one daily newspaper printed and circulating in St. Vincent and the Grenadines, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall lodge with the Registrar a copy of the audited account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are deemed to have been complied with.

(5) The Registrar on receiving the account and either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved but the Court may, on application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) The person on whose application an order of the court under this section is made shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he is guilty of an offence.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he is guilty of an offence.

Alternative Provisions as To annual and Final meetings In case of Insolvency

439. Where section 436 has effect, sections 446 and 447 shall apply to the winding up to the exclusion of sections 437 and 438 as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up, but the liquidator shall not be required to summon a meeting of creditors under section 446 at the end of the first year from the commencement of the winding up, unless the meeting held under section 436 is held more than three months before the end of that year.

Provisions Applicable To A Creditors' Voluntary Winding Up

Meeting of Creditors

440. (1) The company shall c.-use a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in one daily newspaper the printed and circulating in St. Vincent and the Grenadines.

(3) The directors of the company shall -

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors; and

(b) appoint one of their number to preside at the meeting.'

(4) The director appointed to preside at the meeting of creditors shall attend and preside at the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) has effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made

(a) by the company in complying with subsection (1) or (2) ;

(b) by the directors of the company in complying with subsection (3); or

(c) by any director of the company in complying with subsection (4). the company or, as the case may be, each of the directors is guilty of an offence, and, in the case of default by the company, every officer of the company who is in default is guilty of an offence.

Appointment of liquidator

441. (1) The creditors and the company at their respective meetings mentioned in section 440 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

(2) Notwithstanding the provisions of subsection (1), when different persons are nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment Of committee Of inspection

442. (1) The creditors at the meeting to be held in pursuance of section 440 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) Notwithstanding the provisions of subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to the provisions of this section and to rules made under section 486, the provisions of section 406 (except subsection (1)) apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

Fixing of liquidators' remuneration and cesser of directors' powers

443. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the committee of inspection, or there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator

**444.* If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

Application of section 435 to a creditors' winding up

445. The provisions of section 435 apply in the case of a creditors' voluntary winding up as in the case of the members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year

446. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year or at the first convenient date within three months (or such longer period as the court may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with subsection (1) he is guilty of an offence.

Final meeting and dissolution

447. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette and in one daily newspaper printed and circulating in St. Vincent and the Grenadines specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is guilty of an offence.

(4) Notwithstanding anything in subsection (3), if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon such a return being made the provisions of this subsection as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(5) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in subsection (3) or (4) shall forthwith register them, and on the expiration of three months from the registration thereof the company is deemed to be dissolved, but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) The person on whose application an order of the court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he is guilty of an offence. If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is guilty of an offence. Provisions Applicable To Every voluntary winding Up

Provisions Applicable To Every Voluntary Winding Up

Distribution of Property of company

448. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally, and subject to that application, shall, unless the articles of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up

449. (1) The liquidator may -

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the Powers given by paragraphs (d), (e) and (f) of section 398 (1) to a liquidator in a winding up by the Court;

(b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court of making calls; and

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

(4) Unless the committee of inspection determines, or, as the case may be, the members otherwise determine, section 402 applies in the case of a liquidator in a voluntary winding up as it applies in the case of a liquidator of a company being wound up by the Court.

Power of court to appoint and remove liquidator in voluntary winding up

450. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment

451. (1) The liquidator shall, within twenty-one days after his appointment, publish in the Gazette and in one daily newspaper printed and circulating in St. Vincent and the Grenadines, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

(2) If the liquidator fails to comply with the requirements of subsection (1) he is guilty of an offence.

Arrangement when binding on creditors

452. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement appeal to the court against it and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to apply To court to Have questions Determined or Powers exercise

453. The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise is respects the enforcing of calls, or any other .tatter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of the power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks fit.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall enter a minute of the order in his records relating to the company.

Costs of voluntary winding up

454. All costs, charges and expenses property incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for Rights of Creditors and Contributories

455. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

DIVISION D

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

Debts of all Descriptions to Be proved

456. (1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(2) Subject to section 457, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential Payments

457. (1) In a winding up of a company there shall be paid in priority to all other debts-

(a) all rates, charges, taxes, assessments or impositions, whether imposed or made by the Government or by any public authority under the provisions of any Act, and having become due and payable within twelve months next before the relevant date;

(b) all wages or salary (whether or not earned wholly or in part by way of commission or for time or piece work) of any employee, not being a director, in respect of services rendered to the company during four months next before the relevant date; or

(c) all severance benefits, not exceeding the equivalent of forty five days basic wages or salary, due or accruing to an employee, not being a director, whether retrenched by an employer, a receiver, a liquidator or some other person.

(2) Where any payment on account of wages, salary or severance benefits has been made to any employee of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that employee would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(3) The debts and claims to which priority is given by subsection (1) shall

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and paid accordingly oat of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as are necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by subsection (1) shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, but in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, "the relevant date" means

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

Effect of Winding Up on Antecedent and Other Transactions

Fraudulent Preference

458. (1) Any conveyance, mortgage, delivery goods, payment, execution, or other act relating property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up is deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

Liabilities and Rights of certain Fraudulently Preferred persons

459. (1) Where, in the case of a company wound up in St. Vincent and the Grenadines, anything made or done after the commencement of this Act is void under section 458 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the interest of a person referred to in subsection (1) shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.

(3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) applies, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of Floating, charge

460. Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six per centum per annum or such other rate as may for the time being be prescribed by regulation under section 527.

Disclaimer of Onerous property

461. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in corporations, or unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave disclaim, may require such notices to be given persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court, may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with a company, 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 thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such person as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favor of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon terms of making that person

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or if the court thinks fit. subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury and may accordingly prove the amount as a debt in the winding up.

Interpretation

462. In sections 463 and 464

"bailiff" includes any officer charged with the execution of a writ or other process;

"goods" includes all chattels personal.

Restriction of Rights of Creditor as to Execution or Attachment

463. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up but

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by a bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(2) For the purposes of this section -

(a) an execution against goods shall be completed by seizure and sale;

(b) an attachment of a debt is deemed to be completed by receipt of the debt; and

(c) an execution against land is deemed to be completed from the date of the order for sale or by seizure as the case may be, and, in the case of an equitable interest, by the appointment of a receiver.

Duties of bailiff As to goods Taken in Execution

464. (l) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding one 'hundred dollars the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favor of the creditor to such extent and subject to such terms as the court thinks fit.

Offences

Offences by Officers of Companies in Liquidation

465. (1) Any person who, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up -

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is 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 he 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) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of five hundred dollars or upwards, or conceals any debt due to or from the company;

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of five hundred dollars or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretense that the company is carrying on its business, obtains on credit, for or on behalf of. the company, any property which the company does not subsequently pay for;

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company,; or

(p)is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up, is guilty of an offence.

(2) It is a sufficient defense in proceedings for an offence under paragraph (a), (b), (c), (d), (f) (n) or (o) of subsection (1) if the accused proves that he had no intent to defraud, and in proceedings for an offence under paragraph (h), (i) or (j) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.

(4) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books

466. Any officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or 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, is guilty of an offence.

Frauds by Officers of Companies which Have gone into Liquidation

467. Any person who, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up

(a) has by false pretenses or by means of any other fraud induced any person to give credit to the company;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company, is guilty of an offence.

468. (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to the default of the company, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable, is guilty of an offence.

(2) For the purposes of this section, proper books of account are deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Fraudulent Trading

469. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on -

(a) with intent to defraud creditors of the company or the creditors of any other person or for any fraudulent purpose;

(b) with reckless disregard of the company's obligation to pay its debts and liabilities; or

(c) with reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities; the court, on the application of the Official Receiver or the liquidator or any creditor or contributory of the company may, if it thinks proper to do so, declare that any of the officers whether past or present, of the company or any other persons who were knowingly parties to the carrying on of the business in that manner are personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, as far as the court may direct.

(2) Where the court makes any declaration referred to in subsection (1) it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make any provision for making the liability of a person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge, on any assets of the company held by or vested in him, or any company or persons on his behalf or any person claiming as assignee from or through the person liable to any person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), "assignee" includes any person to whom or in whose favor, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but 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 any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence.

(5) The provisions of this section have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made in the case of a winding up, the declaration is deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Ordinance.

Power to court to assess damages against delinquent directors, etc.

470. (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer or liquidator of the company, has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust at the court thinks just.

(2) The provisions of this section have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up an order for payment of money is made under this section, the order is deemed to be a final judgment within the meaning of paragraph (g) of subsection (1) of section 3 of the Bankruptcy Ordinance.

Prosecution of delinquent officers and members of a company

471. (1) If it appears to the court in the course of a winding up by the court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable the court may, either on the application of any person interested in the winding up or on its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of a company has been guilty of any offence in relation to the company for which he is criminally liable, he shal1. forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.

(3) If it appears to the court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section have effect as though the report had been made in pursuance of subsection (2).

(4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) shall give him all assistance in connection with the prosecution which he is reasonably able to give.

(5) For the purpose of subsection (4), "agent", in relation to a company, is deemed to include any banker or attorney-at-law of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in manner required by subsection (4), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions As To Winding Up Disqualification for appointment as liquidator

472. A corporation or an undischarged bankrupt is not qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and

(a) any appointment made in contravention of this provision is void; and

(b) any corporation which or an undischarged bankrupt who, acts as liquidator of a company is guilty of an offence.

Notification that a company is in liquidation

473. Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Failure to comply with section 473

474. If default is made in complying with section 473, the company and every officer of the company and every liquidator of the company and every receiver or manager, who knowingly authorizes or permits the default, is guilty of an offence.

Exemption of certain documents from stamp duty on winding up of companies

475. (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, of a company-

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or

interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

(b) every power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up or to any proceeding under any such winding up, is exempt from duties chargeable under the enactment relating to stamp duties.

(2) In subsection (1) "assurance" includes deed, conveyance, assignment, transfer and surrender.

Books of Company to Be evidence

476. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.

Disposal of Books and papers Of companies

477. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, namely -

(a) in the case of a winding up by the court in such-manner as the court directs;

(b) in the case of a members, voluntary winding up, in such way as a general meeting of the company by ordinary resolution directs, and in the case of a creditors' voluntary winding up in such manner as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company, by resolution directs.

(3) After five years from the dissolution of the company no responsibility rests on the company, the liquidators or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(4) Provision may be made by rules made under section 486 for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the court.

(4) If any person acts in contravention of any rules made under section 486 for the purposes of this section or of any direction of the court there under, he is guilty of an offence.

Information as To pending Liquidation

478. (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in the winding up and the position of the liquidator.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he is guilty of an offence and any person untruthfully stating himself as provided on subsection (2) to be a creditor or contributory is guilty of a contempt of court, and is, on the application of the liquidator or of the official Receiver, punishable accordingly.

Unclaimed

479. (1) If it appears either from any statement sent to the Registrar under section 478 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay that money into court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

Supplementary Powers of Court Meetings to ascertain wishes of creditors or contributories

480. The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

Affidavits, etc.

481. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in St. Vincent and the Grenadines or elsewhere before any court, judge, magistrate, or person lawfully authorized to take and receive affidavits.

(2) All courts, judges; magistrates, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, magistrate or person attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Provisions As To Dissolution

Power of court to declare dissolution of company void

482. (1) Where a company has been dissolved (otherwise than pursuant to section 483) the court may of at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made shall, within seven days after the making of the order, or such further time as the court allows, lodge with the Registrar a copy of the order, and if that person fails so to do he is guilty of an offence.

Registrar may strike defunct company off register

483. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether. the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be structure of the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette- and on the publication in the Gazette of this notice the company shall be dissolved, but -

(a) the liability, if any, of every director, managing officer, and member of the company continues and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection affects the power of the court to wind up a company the name of which has been struck off the register.

(6) If the company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company should be reordered to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the

company is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or other officer of the company or if there is no director or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the articles of incorporation, addressed to him at the address mentioned m the articles of incorporation.

Outstanding assets of defunct company to vest in official receiver

484. (1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside St. Vincent and the Grenadines which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which has not been realized or otherwise disposed of or dealt with by the company or its liquidator, such property shall, for the purposes of this section and section 485 and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail itself of that claim, right or remedy without such approval or concurrence.

(3) Property vested in the Official Receiver by operation of this section is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Official Receiver or the Crown (State) any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims, or liabilities out of the assets of the company so far as they are in the opinion of the official Receiver properly available for and applicable to such payment.

Disposal of moneys

485. (1) Upon proof to the satisfaction of the official Receiver that there is vested in the official Receiver by operation of section 484 or of an enactment of a proclaimed state containing provisions similar to the provisions of section 491, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the official Receiver may get in, sell or otherwise dispose of or deal with the estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with any such property either solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract upon such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with any such property as he thinks expedient, and may make, execute and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise as is prescribed in respect of the exercise of powers conferred by subsection (1).

(4) The moneys received by the official Receiver in the exercise of any of the powers conferred on him by this section shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorized by section 484 or this section and the surplus, if any, shall be paid into such account as is prescribed, and the same shall, subject to the rules made under section 486, be dealt with according to orders of the court.

(5) Any claim, suit, or action for or in respect of any moneys paid into the prescribed account shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidated Fund.

Rules

486. Rules for carrying this Part into effect as far as relates to procedure, winding up and fees and costs in connection therewith, may be made in like manner as rules may be made under and for the purposes of the Judicature Act.

DIVISION E - WINDING UP OF UNREGISTERED COMPANIES

“Unregistered company.”

487. (1) For the purposes of this Division, "unregistered company" includes

(a) an external company;

(b) any partnership, whether limited or not, or association consisting of more than seven members; or

(c) any body corporate not incorporated or continued under this Act, and any unincorporated body; but does not include -

(d) a company incorporated or continued under this Act; or

(e) any society or association established under any enactment designated by the Attorney General by order published in the Gazette.

(2) The provisions of this Division are in addition to and not in restriction of any provisions contained in this Act with respect to the winding up of companies by the court and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised done by it or him in the winding up of companies.

(3) The Attorney General may, from time to time, make an order for the purposes of paragraph (e) of subsection (1)

Winding up Of unregistered Companies

488. (1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations -

(a) the principal place of business of the company in St. Vincent and the Grenadines is for all the purposes of the winding up the registered office of the company;

(b) no such company shall be wound up voluntarily;

(i) if the company is dissolved or has ceased to have a place of business in St. Vincent and the Grenadines or has a place of business only for the purpose of winding up its affairs or has ceased to carry on business;

(ii) if the company is unable to pay its debts;

(iii) if the court is of the opinion that it is just and equitable that the company should be wound up; or in the case of an external company, in such a case as is referred to in paragraph (d) of section 377.

(2) An unregistered company is deemed to be unable to pay its debts if a creditor to whom the company is indebted in a sum exceeding five thousand dollars then due has served on the company, by leaving at its principal place of business or by delivering to the secretary or some director, manager or principal officer of the company, or on a person authorized by an external company to accept service of process, or by otherwise serving in such manner as the court approves or directs, a written demand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) any action or other proceeding has been instituted against any member for debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business or by delivering it to the secretary or some director, manager or principal officer of the company, or on a person authorized by an external company to accept service of process, or by otherwise serving it in such manner as the court approves or directs, the company has not within three weeks after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

(c) execution or other process issued on a judgment, decree or order obtained in any court in favor of a creditor against a company or any member thereof as such or any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied;

(d) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

(3) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(4) A company incorporated outside St. Vincent and the Grenadines may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or had otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(5) The money sum for the time being specified in subsection (2) is subject to increase or reduction by regulation under section 527; but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

Contributories in winding up of unregistered company

489. (1) On an unregistered company being wound up every person is a contributory unregistered

(a) who is liable to pay or contribute to the payment of -

(i) any debt or liability of the company;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable, and every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the trustees of bankrupt contributories respectively apply.

Power of court to stay or restrain proceedings

490. (1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(2) Where an order has been made for winding up an unregistered company no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the court and subject to such terms as the court imposes.

Outstanding Assets of Defunct Unregistered Company

491. (1) Where an unregistered company, the place defunct of incorporation or origin of which is in a proclaimed State, has been dissolved and there remains in St. Vincent and the Grenadines any outstanding property which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realized, or otherwise disposed of or dealt with, by the company or its liquidator before the dissolution, the property shall, by the operation of this section be and become vested for all the estate and interest :therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is St. Vincent and the Grenadines, the provisions of sections 484 and 485 apply with such adaptations as may be necessary in respect of that company.

(3) Where, it appears to the Minister that an enactment in force in any Member State of the Caribbean Community contains provisions similar to the provisions of this section, he may, by order published in the Gazette, declare that State to be a proclaimed State for the purposes of this section.

PART V - Administration And General

DIVISION A - FUNCTIONS OF THE REGISTRAR

Registrar of Companies Responsibility

492. (1) The Registrar of Companies is, under the general supervision of the Minister, responsible for the administration of this Act.

(2) A seal may be prescribed by the Minister for use by the Registrar in the performance of his duties.

Service upon The Registrar

493. A document may be served upon the Registrar or by leaving it at the office of the Registrar or by sending it by telex, or telefax or by prepaid post or cable addressed to the Registrar at his office.

494. The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate

(a) that is

(i) incorporated under this Act;

(ii) continued as a company under this Act;

(iii) registered under this Act; or

(iv) restored to the register pursuant to this Act, and

(b) that has not been subsequently struck off that register.

Inspection of Register

495. (1) A person who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations, to be sent to the Registrar, except a report sent to him under subsection (2) of section 519.

(2) The Registrar shall upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Act, except a report received by him pursuant to subsection (2)of section 519.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form,

(a) the Registrar shall furnish any copy required to be furnished under this Act in an intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Notices and Documents

Notice to Directors etc.

496. (1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex or telefax or by prepaid post or cable, addressed to, or may be delivered personally to, (a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and

(b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 69 or 77.

(2) A director named in a notice sent by a company to the Registrar under section 69 or 77 and filed by the Registrar is, for the purposes of this Act, a director of the company referred to in the notice.

Presumption of receipt

497. A notice or document sent in accordance with section 496 to a shareholder or director of a company is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Undelivered Documents

498. If a company sends a notice or document to a shareholder in accordance with section 496 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Notice waiver

499. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate by Company

500. A certificate issued on behalf of a company stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Evidentiary Value

501. When introduced as evidence in any civil, criminal or administrative action or proceeding,

(a) a fact stated in a certificate referred to in section 500;

(b) a certified extract from a register of members or debenture holders of a company; or

(c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company, is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Copies

502. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by telefax or other device.

Filed articles

503. (1) Where this Act requires that articles elating to a company be sent to the Registrar, unless otherwise specifically provided,

(a) two copies, in this section called "duplicate originals", of the articles shall be signed by a director or an officer of the company, or, n the case of articles of incorporation, by he incorporator; and

(b) upon receiving duplicate originals of any articles that conform to law, and any other required documents and the prescribed fees, 'the Registrar shall

(i) endorse on each of the duplicate originals the word "registered" and the date of the registration;

(ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the. articles;

(iii) file a copy o. the certificate and attached article; and

(iv) send to the company or its representative the original certificate and attached articles.

(2) A certificate referred to in subsection (1) and issued by the Registrar may be dated as of the day he receives the articles, or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles.

(3) A signature required on a certificate referred to in subsection (1) may be printed or otherwise mechanically reproduced on the certificate.

**Alteration of documents*

504. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized by the person who sent him the notice or document, or by the representative of that person.

Correction of documents

505. (1) if a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company shall, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require; and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

Proof of documents

506. (1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation:

(3) The Registrar may require of a body corporate the authentication of a document, and the authentication may be signed by the secretary, or any director or authorized person or by the attorney-at-law for the body corporate.

Retention of documents

507. The Registrar need not produce any document of a prescribed class after six years from the date he received it.

Registrar's certificate

508. (1) The Registrar may furnish any person with a certificate stating

(a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;

(b) that a name, whether that of a company or not, is or is not on the register; or

(c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate or the certification shall be signed by the Registrar or by his deputy.

(3) A certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative act-ion or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

509. (1) The Registrar may refuse to receive, file register a document submitted to him, if he is of the opinion that the document (a) contains matter contrary to the law;

(b) by reason of any omission or error in description, has not been duly completed;

(c) does not comply with the requirements of this Act;

(d) contains an error, alteration or erasure;

(e) is not sufficiently legible; or

(f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

Filing form

510. Every document sent to the Registrar shall be in typed or printed form.

Striking off Register

511. (1) The Registrar may strike off the Register a company or other body corporate, if

(a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this-Act;

(b) the company is dissolved;

(c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;

(d) the company does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 515; or

(e) the registration of the body corporate is revoked pursuant to this Act.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default - under paragraph (a) of subsection (1), he shall send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 513 applies mutatis mutandis to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the company or ,other body corporate off the register and publish a notice thereof in the Gazette.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

Liability continues

512. Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.

**Services

Service on company

513. A notice or document may be served on a company

(a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company; or

(b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Company Names

Reservation of name

514. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended company or for a company about to change its name.

Prohibited name

515. The name of a company

(a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use. of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and

(i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles b, which the name is acquired, or

(ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;

(b) shall not be identical to the name of a body corporate incorporated under the laws of St. Vincent and the Grenadines before the commencement date;

(c) shall not suggest or imply a connection with the Crown or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;

(d) shall not suggest or imply a connection with a political party or a leader of a political party;

(e) shall not suggest or imply a connection with a university or a professional association recognized by the laws of St. Vincent and the Grenadines unless the university or professional association concerned consents in writing to the use of the proposed name; and

(f) shall not be a name that is prohibited by the regulations.

Refusal of articles

516. The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if

(a) the name is not distinctive because

(i) it is too general;

(ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal; or

(iii) primarily it is only a geographic name used alone unless the applicant establishes that the name has through use acquired and continues to have a secondary meaning;

(b) the name is defectively inaccurate in describing

(i) the business, goods or services in association with which it is proposed to be used;

(ii) the conditions under which the goods or services will be produced or supplied;

(iii) the persons to be employed in the production or supply of those goods or services; or

(iv) the place of origin of those goods and services;

(c) it is likely to be confusing with that of a company that was dissolved;

(d) it contains the word or words "credit union", "co-operative", or "co-op" when it connotes a co-operative venture; or

(e) it is, in the opinion of the Registrar, for any reason, objectionable.

Amalgamated Company

517. If two or more companies amalgamate, the amalgamated company may have

(a) the name of one of the amalgamating companies;

(b) a distinctive combination that is not confusing of the amalgamating companies; or

(c) a distinctive new name that is not confusing.

DIVISION B - INVESTIGATION OF COMPANIES

Investigation Order

518. (1) A shareholder or debenture holder of a company, or the Registrar, may apply, ex parts or upon such notice as the court may require, to the court for an order directing that an investigation be made of the company and any of its affiliated companies.

(2) If, upon an application under subsection (1) in respect of a company, it appears to the court that

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;

(b) the business or affairs of the company or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of a shareholder or debenture holder;

(c) 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;

(d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly, or

(e) in any case it is in the public interest that an investigation of the company be made, the court may order that an investigation be made of the company and any of its affiliated companies.

(3) If a shareholder or debenture holder makes an application under subsection (1) he shall give the Registrar reasonable notice thereof; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(4) An ex party application under this section shall be heard in camera.

(5) No person shall publish anything relating to an ex part proceeding except with the authorization of the court or the written consent of the company that is being, or to be, investigated.

Court powers

519.* **(1) In connection with an investigation under this Division in respect of a company, the court may make any order it thinks fit, including

(a) an order to investigate;

(b) an order appointing an inspector, who may be the Registrar, and fixing the remuneration of the inspector and replacing the inspector.

(c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(d) an order authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(e) an order requiring any person to produce documents or records to the inspector;

(f) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;

(g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;

(h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(i) an order requiring an inspector to make an interim or final report to the court;

(j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the court designates;

(k) an order requiring the company to pay the costs of the investigation.

(2) An inspector shall send to the Registrar a copy of every report made by the inspector under this Division.

Inspector's powers

520. (1) An inspector under this Division has the powers set out in the order appointing him.

(2) An inspector shall upon request produce to an interested person a copy of any order made under subsection (1) of section 519.

In camera hearing

521. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Division be heard in camera and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Division may appear and be heard 415 person or by an attorney-at-law.

Incriminating evidence

522. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Division by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence, or a prosecution under section 3 of the Perjury Act in respect of the evidence.

Privilege Absolute

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

Inquiries Ownership Interest

524. (1) If the Registrar is satisfied that, for the purposes of Division F of Part I or Division E of Part II, there is reason to inquire into the ownership or control of a share or debenture of a company or any of its affiliates, the Registrar may require any person that he reasonably believes has or has had interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints,

(a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and

(b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(2) For the purposes of subsection (1) , a person has an interest in a share or debenture, if

(a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein;

(b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or

(c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

Client Privileges

525. Nothing in this Division affects the privileges that exist in respect of an attorney-at-law and his client.

Inquiries

526. The Registrar may make of any person any inquiries that relate to compliance with this Act by any persons.

DIVISION C - REGULATIONS

Regulations

527. (1) The Minister may make such regulations as are required for the better administration of this Act, and, in particular, the Minister may make regulations

(a) prescribing any matter required or authorized by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount thereof;

(c) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by him;

(d) prescribing the rules with respect to exemptions permitted by this Act;

(e) respecting the names of companies or classes thereof;

(f) respecting the authorized capital of companies;

(g) respecting the preferences, rights, conditions, restrictions, limitations prohibitions attaching to shares or classes series of shares of companies;

(h) respecting the designation of classes of shares; and

(i) respecting any other matter required for the efficient administration of this Act.

(2) Regulations made under this section are subject to negative resolution.

DIVISION D - OFFENCES AND PENALTIES

Name offence

528. Subject to subsection (2) of section 10, a company that contravenes section 10 is guilty of an offence and liable on summary conviction to a fine of $2,000.00.

Abuse of Corporate status

529. Each of the individuals who carries on business under a name part of which is "limited", "incorporated" or "corporation" or the abbreviations "ltd", "inc" or "corp" is guilty of an offence and liable on summary conviction to a fine of $500.00.

Reports

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

(a) that is required by this Act or the regulations to be sent to the Registrar or to any other person, and

(b) that

(i) contains an untrue statement of a material fact, or

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

is guilty of an offence and liable on summary conviction to a fine of $2,000.00 or to imprisonment for a term of six months, or to both.

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

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorized, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine of $2,000.00 or to imprisonment for a term of six months; or to both.

Specific Offences

531. (1) A person is guilty of an offence and liable on summary conviction to a fine of $2,000.00 and to imprisonment for a term of six months, or to both

(a) who without reasonable cause contravenes section 189;

(b) who without reasonable cause contravenes ~section 193;

(c) who willfully contravenes section 304, 311, or 313.

(d) who without reasonable cause contravenes subsection (5) of section 269;

(e) who willfully contravenes section 142 or 143;

(f) who without reasonable cause fails to comply with a requirement of the Registrar under section 524 `to report to the Registrar any information or any names or addresses of persons sought by the - Registrar under that section;

(g) who, being a proxy holder or alternate proxy holder, fails without reasonable cause to comply with the directions of a shareholder under subsection (1) of section 145;

(h) who, being a registrant within the meaning of this Act, knowingly contravenes section 146;

(i) who, being an auditor or former auditor of a company, contravenes subsection (1) of section 169 without reasonable cause; or

(j) who, being a director or officer of a company knowingly contravenes section 173.

(2) Where the person who is guilty of an offence under subsection (1) is a body corporate, then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of $2,000.00 or to imprisonment for a term of six months, or to both.

Company Offences

532. A company is guilty of an offence and liable on summary conviction to a fine of $2,000.00, if

(a) the company contravenes section 18(1), 315, 316, 317 or 319;

(b) the management of the company without reasonable cause fails to comply with subsection (1) of section 141; or

(c) the company without reasonable cause contravenes section 153 or 155;

(2) When a company is guilty of an offence under this section, any director or officer of the company who knowingly authorized, acquiesced in or permitted the contravention is also guilty of an offence and liable on summary conviction to a fine of $2,000.00 or to imprisonment for a term of six months, or to both..

General offence

533. Every person who is guilty of an offence under this Act or the regulations is if no punishment is elsewhere in this Act provided for that offence, liable on summary conviction to a fine of $2,000.00.

Defense re prospectuses

534. In a prosecution for an offence under this Act arising out of an untrue statement or willful non-disclosure in a prospectus, it is a defense for the person charged to prove that the statement or non-disclosure was immaterial, or that he had reasonable grounds to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

Order to comply

535. When a person is convicted of an offence under this Act or the regulations, the court, or a court of summary jurisdiction in which proceedings in respect of the offence are taken, may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation

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

Civil Remedies Unaffected

537. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

DIVISION E - CONSTRUCTION AND INTERPRETATION OF ACT

Corporate Relationships

Affiliated Corporations

538. For the purposes of this Act,

(h) one body corporate is affiliated with another corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and

(i) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

“Control”

539. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

“Holding” and “subsidiary”

540. For the purposes of this Act,

(a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Public Distribution of Corporate Securities

“Distribution” to public

541. (1) For the purposes of this Act,

(a) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture,

(i) there has been, under the laws of St. Vincent and the Grenadines or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument; or

(ii) the share or debenture is listed for trading on any stock exchange wherever situated; and

(b) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in subparagraph (i) of paragraph (a) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Act, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public.

(3) For the purposes of this Act,

(a) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;

(b) a statement included in a prospectus or statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included; and

(c) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise.

“Offer” to the public

542. (1) Any reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; and references in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, unless the contrary intention appears, be similarly construed.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or other-wise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company.

Corporate and other Expressions

Definition of technical words

543. (1) In this Act, unless the context otherwise requires "affairs" means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the companies or other bodies corporate;

"affiliate" means an affiliated company or affiliated body corporate within the meaning of section 538;

"articles" means, unless qualified,

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

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

“associate” when used to indicate a relationship with any person means

(a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights

(i) under all circumstances,

(ii) by reason of the occurrence of an event that has occurred and is continuing, or

(iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(d) a spouse of that person within the meaning of subsections (2) and (3);„

(e) a legitimate or an illegitimate child, a step-child or an adopted child of that person; and

(f) a relative of that person or of his spouse if that relative has the same residence as that person;

"auditor" includes a partnership of auditors;

"beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;

“body corporate" includes a company within the meaning of this section or other body corporate wherever or however incorporated, other than a corporation sole;

"commencement date" means the date on which this Act comes into operation;

"company" means a body corporate that is incorporated or continued under this Act;

"court" means the High Court;

"corporate instruments" includes any statute, letters potent , memorandum association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

"debenture" includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

"director" in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called.

"external company" means any firm or other body of pex'sons-,~1`fetTer incorporated or incorporated, that is formed under the laws of a country other than St. Vincent and the Grenadines;

"former Act" means the companies Act;

"former Act company" means a company incorporated or registered under the former Act or any Act replaced by that Act;

"incorporator" means, in relation to a company, a person who signs the articles of incorporation of the company;

"legal representative" in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or person, and without limiting the generality of the foregoing, includes, as the

circumstances require, a trustee, executor, administrator, assignee, or receiver of the company, shareholder, debenture holder or person;

"liability" includes, in relation to a company, any debt of the company that arises under

(a) section 49,

(b) subsection (2) of section 234, or

(c) paragraph (f). or (g) of subsection (3) of section 241; "Minister" means the Minister responsible for companies "officer" in relation to a body corporate means (a) the chairman, deputy chairman, president or vice-president of the board of directors;

(b) the managing director, general manager, comptroller, secretary or treasurer; or

(c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is appointed by the broad of directors to perform such functions;

"ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

"public company" means a company any of whose issued debentures are or were part, of a distribution to the public within the meaning of section 541;

"record" includes any register, book or other record that is required to be kept by a company or other body corporate;

"redeemable share" means a share issued by a company

(a) that the company can purchase or redeem upon demand of the company, or

(b) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

"Registrar" refers to the Registrar of Companies under this Act;

"security interest" means any interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company;

"send" includes deliver;

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

'share' includes stock;

"shareholder" in relation to a company, includes

(a) a member of a company described in Division A of Part III, except where inconsistent with a provision of that Division;

(b) the personal representative of a deceased shareholder;

(c) the trustee in bankruptcy of a bankrupt shareholder; and

(d) a person in whose favor a transfer of shares has been executed but whose name has not been entered in the register of members, or, if two or more transfers of those shares have been executed, the person in whose favor the most recent transfer has been made;

“special resolution” means a resolution of which at least 21 days notice is given which is

(a) passed by a majority of not less than 75 per cent of the votes cast by the shareholders who voted in respect of the resolution; or

(b) signed by all the shareholders entitled to vote on the resolution. "stock exchange" means any market where shares or bonds are traded; "unanimous shareholder agreement" means an agreement described in section 135.

(2) For the purposes of this Act reference to a spouse includes a single woman who was living together with a single man as his wife for a period of not less than 5 years and a single man who was living together with a single woman for a like period.

(3) For the purposes of subsection (2) a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced.

DIVISION F - INCIDENTAL AND CONSEQUENTIAL MATTERS

Repeal

544. (1) The former Act is repealed.

(2) Notwithstanding subsection (1) the provisions of the former Act continue to apply so far as is necessary to enable a former-Act company lawfully to function until it is continued under this Act or wound up.

References to Companies Act

545. (1) In this section and section 546

(a) "enactment" means an Act or regulation or any provision of an Act or regulation: and

(b) "regulation" includes an order, regulation, order in council, order prescribing regulations, rule, rule of court, form, tariff of costs or fees, letters patent, commission, warrant, and any instrument issued, made or established

(i) in the execution of a power conferred by or under an Act other than the former Act, or

(ii) by or under the authority of the Attorney General.

(2) A reference in an unrepealed enactment to the former Act is, as regards a transaction, matter or things subsequent to the commencement date to be construed and applied, unless the context otherwise requires, as a reference to the provisions of this Act that relate to the same subject-matter as the provisions of the former Act; but if there are no provisions in this Act that relate to the same subject-matter, the former Act is to be construed and applied as unrepealed so far as is necessary to do so to maintain or give effect to the unrepealed provision.

Transitional

546. (1) Where in any enactment the expression "registered under the Companies Act" occurs, the expression, unless the context otherwise requires, refers to incorporation, continuation or registration under this Act in respect of all transactions, matters or things subsequent to the commencement date.

(2) Where in any enactment the expression "memorandum of association" or occur, those expressions, unless the context otherwise requires, refer respectively to articles of incorporation and by-laws within the meaning of this Act.

(3) Where in any enactment a reference is made to winding-up under, or to the winding-up provisions of, the former Act, then, unless the context otherwise requires, it refers, in respect of all transactions, matters or things subsequent to the commencement date, to winding up or dissolution under this Act.

Repeal Effect

547. (1) Notwithstanding subsection (1) of section 544, if on the commencement date any proceedings under !-,he former Act are pending in respect of the winding-up of any body under that Act, those proceedings may be continued under that Act as if this Act had not been enacted.

(2) When, on the commencement date an amalgamation agreement entered under the former Act and approved by the court under that Act is in the course of being filed with the Registrar General or is in his hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.

Security for costs

548. Where a company is plaintiff in any action or other legal proceeding any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defense, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

Power of Court to grant Relief in Certain cases

549. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to he excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after. hearing the evidence, may, if he is satisfied-that the defendant' ought in pursuance_ of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following -

(a) directors, managers or officers of a company;

(b) persons employed by a company as auditors.

Saving for privileged communication

550. Where proceedings are instituted under this Act against any person, nothing in this Act shall be taken to require any person who has acted as attorney-at-law for the defendant to disclose any privileged communication made to him in that capacity.

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Passed in the House of Assembly this 13th day of January, 1994.

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