MONTSERRAT

CHAPTER 11.13

INTERNATIONAL BUSINESS COMPANIES ACT[1]
and Subsidiary Legislation

Revised Edition
showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

[1] *Repealed sections of the Act consolidated*

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INTERNATIONAL BUSINESS COMPANIES ACT

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CHAPTER 11.13

INTERNATIONAL BUSINESS COMPANIES ACT

(Acts 19 of 1985, 6 of 1992, 10 of 2002 and 9 of 2011)

AN ACT TO MAKE PROVISION FOR THE INCORPORATION AND OPERATION OF INTERNATIONAL BUSINESS COMPANIES AND RELATED MATTERS.

Commencement

[26 August 1986]

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the International Business Companies Act.

Interpretation

2. (1) In this Act—

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

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

"bearer share" means a share in the capital of any company incorporated in Montserrat which—

(a) is represented by a certificate that does not record the owner's name; and

(b) is transferable by delivery of the certificate;

(Inserted by Act 10 of 2002)

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

(a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares; and

(b) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

"Commission" means the Financial Services Commission established under the Financial Services Commission Act; *(Inserted by Act 10 of 2002)*

"Companies Act" means the Companies Act of Montserrat;

"continued" means continued within the context of Part 8;

"Court" means the High Court of Montserrat or a Judge thereof;

"**custodian**" means a person licensed under the Company Management Act or the Banking Act who, in either case, is authorised by the Commission to act as a custodian of bearer shares; *(Inserted by Act 10 of 2002)*

"effective date" means the date on which the International Business Companies (Amendment) Act 2002* comes into effect; *(Inserted by Act 10 of 2002)*

"member" means a person who holds shares in a company;

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

"person" includes a trust, the estate of a deceased individual, a partnership, or an unincorporated association of persons;

"person resident in Montserrat" means a person who ordinarily resides within Montserrat or carries on business from an office or other fixed place of business within Montserrat;

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

"Registrar" means, notwithstanding anything in the Interpretation Act or in the Companies Act or in the Registration of Records Act or in any other written law the Registrar of Offshore Companies; *(Amended by Act 6 of 1992)*

"resolution of directors" means—

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

(b) a resolution consented to by an absolute majority, or such larger majority as may be specified in the Articles, of all

* The International Business Companies (Amendment) Act 2002 came into force on 11 February, 2003 – S.R.O. 27/2003.

directors or of all members of the committee, as the case may be;

"resolution of members" means—

(a) a resolution approved at a properly constituted meeting of the members of a company by the affirmative vote of—

(i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares which were present at the meeting and were voted and not abstained; or

(ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of each class or series of shares which were present at the meeting and entitled to vote as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares present at the meeting and were voted and not abstained; or

(b) a resolution consented to by—

(i) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of shares entitled to vote thereon; or

(ii) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of each class or series of shares entitled to vote as a class or series and of an absolute majority or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon;

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

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

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

(2) A reference to money in this Act is a reference to the currency of the United States of America.

(3) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside Montserrat shall be a company incorporated under this Act if it is continued as a company incorporated under this Act in accordance with Part 8 and reference in this Act to a "**company**" incorporated under this Act shall be construed accordingly.

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

PART 2

CONSTITUTION OF COMPANIES

Incorporation

3. Subject to the requirements of this Act, any person may singly or jointly with others, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.

Restrictions on incorporation

4. No company shall be incorporated under this Act unless immediately upon its incorporation the company is an International Business Company.

Requirements of International Business Companies

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

(a) carry on business with persons resident in Montserrat;

(b) own an interest in real property situated in Montserrat, other than a lease referred to in subsection (2)*(e)*;

(c) accept banking deposits from persons resident in Montserrat;

(d) accept contracts of insurance from persons resident in Montserrat.

(2) For the purposes of subsection (1)*(a)*, an International Business Company shall not be treated as carrying on business with persons resident in Montserrat if—

(a) it makes or maintains deposits with a person carrying on business within Montserrat;

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

(c) it prepares or maintains books and records within Montserrat;

(d) it holds, within Montserrat, meetings of its directors or members;

(e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;

(f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or

(g) shares, debt obligations or other securities in the company are owned by any person resident in Montserrat or by any company incorporated under this Act or under the Companies Act.

Effect of failure to satisfy requirement to section 5

6. (1) Without affecting the operation of section 112, if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business Company under section 5, or if having satisfied the requirements it subsequently ceases to satisfy the requirements for a continuous period of more than thirty days, the company shall upon expiration of that period notify the Registrar of that fact.

(2) A company that wilfully contravenes subsection (1) is liable to a penalty of $100 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

Personal liability

7. Subject to section 79, no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in Montserrat, and except in so far as he may be liable for his own conduct or acts.

Business objects or purposes

8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other law for the time being in force in Montserrat.

Powers

9. (1) Subject to any limitations in its Memorandum or Articles, this Act or any other law for the time being in force in Montserrat, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following—

(a) issue registered bearer shares or both; *(Amended by Act 10 of 2002)*

(b) issue the following—

(i) voting shares;

(ii) non-voting shares;

(iii) shares that may have more or less than one vote per share;

(iv) shares that may be voted only on certain matters or only upon the occurrence of certain events; and

(v) shares that may be voted only when held by persons who meet specified requirements;

(c) issue common shares, preferred shares or redeemable shares;

(d) issue shares that entitle participation only in certain assets;

(e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;

(f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;

(g) purchase, redeem or otherwise acquire and hold its own shares;

(h) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and

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

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

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

Validity of certain acts of company

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

(a) in proceedings by a member against the company to prohibit the doing of any act or the transfer of real or personal property by or to the company; or

(b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorised act.

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

(a) the unauthorised act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;

(b) all the parties to the contract are parties to the proceedings; and

(c) it appears fair and reasonable to set aside or prohibit the performance of the contract,

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

Name

11. (1) The word "**Limited**" or "**Corporation**" or "**Incorporated**" or the abbreviation "**Ltd.**" or "**Corp.**" or **"Inc."** or such other word or abbreviation as is used and recognised in another country to denote that the liability of the shareholders of a body corporate is limited, must form part of the name of every company incorporated under this Act.

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

(a) is identical with that under which a company in existence is already incorporated under this Act or under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent; or

(b) contains the words "**Bank**", "**Building Society**", "**Chamber of Commerce**", "**Chartered**", "**Cooperative**", "**Imperial**", "**Municipal**", "**Royal**" or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest—

(i) the patronage of Her Majesty or that of a member of the Royal Family;

(ii) a connection with Her Majesty's Government or a department thereof; or

(iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter.

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

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

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

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

the Registrar may give notice to the last registered company to change its name and if it fails to do so within sixty days from the date of the notice, the Registrar must amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and the Registrar must publish notice of the change in the *Gazette*.

(5) Where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue within three working days, a certificate of incorporation indicating the change of name.

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

(7) The Registrar may, upon a request made by any person, reserve for one year, a name for future adoption by a company under this Act.

Memorandum

12. (1) The Memorandum must include—

(a) the name of the company;

(b) the address within Montserrat of the registered office of the company;

(c) the name and address within Montserrat of the registered agent of the company;

(d) the objects or purposes for which the company is to be incorporated;

(e) the currency in which shares in the company shall be issued;

(f) a statement of the authorised capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;

(g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;

(h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;

(i) the number of bearer shares as registered shares and the number of bearer shares as bearer shares;

(j) whether registered shares may be exchanged for bearer shares and whether bearer shares may be exchanged for registered shares; and

(k) if bearer shares are authorised to be issued, the manner in which a required notice to members is to be given to the holders of bearer shares.

(2) For the purposes of subsection (1)*(d)*, if the Memorandum contains a statement either alone or with other objects or purposes that the purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in Montserrat, the effect of such a statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

(3) The Memorandum must be signed by each subscriber in the presence of a person who must sign his name as a witness.

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

and administrators, a covenant to observe the provisions of the Memorandum, subject to this Act.

(Amended by Act 10 of 2002)

Articles

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

(2) The Articles must be signed by each subscriber in the presence of a person who must sign his name as a witness.

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

Registration

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

(2) Upon the registration of the Memorandum and Articles, the Registrar shall within three working days following such registration issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

Certificate of incorporation

15. (1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum.

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

Amendment of Memorandum and Articles

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

(2) A company that amends its Memorandum or Articles must within fourteen days submit the amendment to the Registrar and the Registrar must retain and register the amendment in the Register.

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

(4) A company that wilfully contravenes subsection (2) is liable to a penalty of $50 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

Copies of Memorandum and Articles to members

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

PART 3

CAPITAL AND DIVIDENDS

Shares to be fully paid

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

Company not to issue shares to public

19. (1) A company shall not—

(a) offer to the public, whether for cash or otherwise, any securities of the company; or

(b) allot or agree to allot, whether for cash or otherwise, any securities of the company with a view to all or any of those securities being offered for sale to the public,

unless the offer is of a category exempted from the provisions of this section by regulations made under subsection (3).

(2) For the purposes of subsection (1), an offer is deemed to be made to the public if it is made to any section of the public, whether selected—

(a) as shareholders or holders of securities in a body corporate;

(b) as clients of the person making the offer; or

(c) in any other manner.

(3) The Governor acting on the advice of Cabinet may make regulations exempting categories of offer from the provisions of this section. *(Amended by Act 9 of 2011)*

(4) A company that contravenes subsection (1) commits an offence.
(Inserted by Act 10 of 2002)

Kind of consideration for shares

20. Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

Amount of consideration for shares

21 (1) Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the realizable assets of the company is conclusive, unless a question of law is involved.

(2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

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

Fractional shares

22. Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

Capital and surplus accounts

23. (1) Upon the issue by a company incorporated under this Act of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

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

preference, if any, in the assets of the company upon liquidation of the company.

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

Dividend of shares

24. (1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

(2) In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.

(3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

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

Increase of capital

25. (1) A company incorporated under this Act may amend its Memorandum to increase its authorised capital.

(2) Subject to any limitations in the Memorandum or Articles, the capital of a company incorporated under this Act may, by a resolution of directors, be increased by transferring an amount of the surplus of the company to capital.

Division and combination of shares

26. (1) A company incorporated under this Act may amend its Memorandum—

(a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

(b) to combine the shares, including issued shares of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are dividend or combined under subsection (1), shares with par value have a proportionately smaller or greater par value, as the case may be.

Character of a share

27. Shares of a company incorporated under this Act are personal property and are not of the nature of real property.

Share certificates

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

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

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

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

and the Articles may provide for the signatures or common seal to be facsimiles.

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

Share register

29. (1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing—

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

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

(c) the date on which the name of each person was entered in the share register;

(d) the date on which any person ceased to be a member;

(e) in the case of bearer shares, the total number of each class and series of bearer shares; and

(f) with respect to each certificate for bearer shares—

(i) the identifying number of the certificate;

(ii) the number of each class or series of bearer shares specified therein;

(iii) the date of issue of the certificate; and

(iv) the name of the custodian of the bearer shares,

but the company may delete from the register information relating to persons who are no longer members of information relating to bearer shares that have been cancelled. *(Amended by Act 10 of 2002)*

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

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

(4) A copy of the share register, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 41.

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

(6) A company that wilfully contravenes this section is liable to a penalty of $25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

Rectification of share register

30. (1) If—

(a) information that is required to be entered in the share register under section 29 is omitted therefrom or inaccurately entered therein; or

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

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

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

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

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

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

Transfer of registered shares

31. (1) Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

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

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

(4) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.

(5) A transfer of registered shares of a deceased, incompetent or bankrupt member of a company incorporated under this Act made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

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

Seizure

32. (1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Montserrat—

(a) by or in connection with any nationalization, expropriation, confiscation, coercion, force or duress, or similar action; or

(b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge,

takes or seizes any shares or other interest in a company incorporated under this Act, the company itself or a person holding shares or any other interest therein, including an interest as a creditor, may apply to the Court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company

but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

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

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

(a) grant such relief as it considers equitable and proper; and

(b) order that any shares of or other interests in the company vest in such trustees as the Court may appoint upon such trusts and for such purposes as the Court determines.

Acquisition of own shares

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

(2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition—

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and, its capital,

and, in the absence of fraud, the decision of the directors as to the value of the realizable assets of the company is conclusive, unless a question of law is involved.

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

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

(b) in exchange for newly issued shares in the company;

(c) by virtue of the provisions of section 97; and

(d) pursuant to an order of the Court.

(4) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital pursuant to section 35, in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

Treasury shares disabled

34. Where shares in a company incorporated under the Act—

(a) are held by the company as treasury shares; or

(b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50% of the votes in the election of directors of the other company,

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

Reduction in capital

35. (1) Subject to any limitations in the Memorandum or Articles and subject to subsection (2), the capital of a company incorporated under this Act may, by a resolution of directors, be reduced and in connection therewith, the company may, by a resolution of directors—

(a) amend its Memorandum to reduce its authorised capital and in connection therewith reduce the par value of any of its shares;

(b) return to members any amount received by the company upon the issue of any of its shares;

(c) purchase, redeem or otherwise acquire its shares out of capital;

(d) transfer any amount from capital to surplus; or

(e) cancel any capital that is lost or not represented by assets having a realizable value.

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

(a) the aggregate par value of—

(i) all outstanding shares with par value; and

(ii) all shares with par value held by the company as treasury shares; and

(b) the aggregate of the amounts designated as capital of—

(i) all outstanding shares without par value; and

(ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(3) No reduction of authorised capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction—

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital,

and, in the absence of fraud, the decision of the directors as to the value of the realizable assets of the company is conclusive, unless a question of law is involved.

Dividends

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

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

(3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend—

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account and its capital,

and, in the absence of fraud, the decision of the directors as to the value of the realizable assets of the company is conclusive, unless a question of law is involved.

Appreciation of assets

37. Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealized appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors is conclusive, unless a question of law is involved.

PART 4

IMMOBILISATION OF BEARER SHARES

Transfer of bearer shares

38. **(1)** A company shall not issue bearer shares to any person other than a custodian.

(2) Except where bearer shares in a company are being redeemed by the company or the shareholder holding bearer shares in the company is seeking to convert those shares into registered shares, that shareholder shall not transfer those shares to any person other than a custodian or otherwise dispose of or deal in those shares unless the shareholder is disposing of those shares to, or dealing in those shares with, a custodian.

(3) In subsection (2) the reference to bearer shares being transferred, disposed of, or dealt with means the transfer or disposal of, or dealing with, the legal interest in the shares.

(4) Where bearer shares are held by a custodian, a person holding the beneficial interest in those bearer shares shall not agree to transfer or otherwise dispose of or deal in the interest in those shares without the approval of the custodian; and where that person transfers the beneficial interest in those bearer shares without such approval that transfer shall be ineffective until the custodian has granted its approval.

(5) Where bearer shares have been delivered to a person other than a custodian, that person shall, within sixty days, deliver the shares to a custodian; and if the bearer shares are not deposited with a custodian within sixty days then the shares shall be null and void for all purposes under this Act.

(6) Notwithstanding subsection (5), the holder of a bearer share which has been deemed null and void in accordance with that subsection may, within three years of the share becoming null and void, apply to the Court for the share to be restored; and the Court may make such order as it considers reasonable in the circumstances.

(7) Where the Court has ordered that a bearer share be restored in accordance with subsection (6), the rights under the share shall only be fully restored when the share has been deposited with a custodian.

(8) Bearer shares shall be transferred by the custodian only into the custody of another custodian unless the shares are to be redeemed by the company or converted into registered shares.

(9) Where a company deals with bearer shares contrary to subsection (8), then the company and every director and officer of the company who is responsible for the contravention is guilty of an offence and liable on summary conviction to a fine of $10,000.

(10) An authorised custodian who transfers a bearer share into the custody of any person contrary to subsection (9) is guilty of an offence and liable on summary conviction to a fine of $25,000.

(11) A shareholder who knowingly transfers ownership of a bearer share contrary to subsection (2) is guilty of an offence and liable on summary conviction to a fine of $10,000.

(Inserted by Act 10 of 2002)

Custody of bearer shares

39. (1) A company shall ensure that its bearer shares are deposited with a custodian within twelve months of the effective date.

(2) A company may apply in writing to the Commission for an extension of the period specified under subsection (1), and such application shall be accompanied by—

(a) a statement of the reasons for the extension;

(b) the prescribed fee; and

(c) such other information as the Registrar considers necessary,

and the Registrar may extend the period by a further period of up to twelve months.

(3) If the bearer shares of a company are not deposited with a custodian within the period specified under subsection (1) or any extension of that period granted under subsection (2), then the shares shall be null and void for all purposes under the Law.

(4) Notwithstanding subsection (3), the holder of a bearer share which has been deemed null and void in accordance with subsection (3) may, within three years of the share becoming null and void, petition the Court for the share to be restored; and the Court may make such order as it considers reasonable in the circumstances.

(5) Where the Court has ordered that a bearer share be restored in accordance with subsection (4), the rights under the share shall only be fully restored when the share has been deposited with a custodian.

(6) Where a custodian ("**the former custodian**") for any reason refuses or is unable to act as custodian, it shall give the beneficial owners of the bearer shares, the company which has issued the bearer shares and the Commission not less than sixty days notice of its intention to terminate its services, and the custodian shall provide the beneficial owners with a list consisting of not less than five names of persons who may provide the services of custodian.

(7) Where a beneficial owner of bearer shares refuses or fails within sixty days of receiving a notice under subsection (6) to direct the former custodian to deposit the bearer shares into the custody of a new custodian, the former custodian may provide the company with the name and address of the beneficial owner and instruct the company to register the bearer

shares in the name of that beneficial owner, or in the case of a minor, the name of the guardian of the beneficial owner, and the former custodian shall inform the Authority of its direction to the company under this section.

(8) The company shall, within thirty days of receiving the instruction under subsection (5), register the shares and notify the custodian and the owner of the shares that it has done so.

(Inserted by Act 10 of 2002)

PART 5

REGISTERED OFFICE AND AGENT

Interpretation for this Part

40. In this Part, **"qualifying licence"** means a licence issued under the Company Management Act.

(Inserted by Act 10 of 2002)

Registered office

41. (1) A company incorporated under this Act shall at all times have a registered office in Montserrat.

(2) The registered office of a company must be provided by a person who holds a qualifying licence.

(3) If the person providing the registered office for a company ceases to hold a qualifying licence, the company shall, within fourteen days of becoming aware that the person concerned has ceased to hold a qualifying licence, change the location of its registered office so that it is provided by a person who holds a qualifying licence.

(4) A company that contravenes subsection (3) commits an offence.

(5) If a person providing the registered office of a company ceases to hold a licence, he does not commit an offence under section 4 of the Company Management Act in respect of the company if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a qualifying licence and that the company must change the situation of its registered office in accordance with subsection (3).

(Amended by Act 10 of 2002)

Registered agent

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

(2) The registered agent of a company must be a person who holds a qualifying licence.

(3) If the registered agent of a company ceases to hold a qualifying licence, the company shall, within fourteen days of becoming aware that the person concerned has ceased to hold a qualifying licence, change its registered agent to a person who holds a qualifying licence.

(4) A company that contravenes subsection (3) commits an offence.

(5) If a person acting as the registered agent of a company ceases to hold a licence, he does not commit an offence under section 4 of the Company Management Act in respect of the company if, upon ceasing to hold the licence, he forthwith notifies the company that he no longer holds a qualifying licence and that the company must change its registered agent in accordance with subsection (3).

(Amended by Act 10 of 2002)

Change of registered office or registered agent

43. A company incorporated under this Act may, by resolution of its directors, change the location of its registered office or change its registered agent and within thirty days of so doing must notify the Registrar in writing as to the address of its new registered agent as the case may be.

Registered agent ceasing to act for company

44. (1) If the registered agent of a company desires to cease to act as its registered agent, he must give not less than thirty days written notice of his intention to do so in accordance with subsection (2).

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

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

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

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

(4) If, at the time of expiry of the notice given under subsection (1), the company has not filed a notice of change of registered agent under section 43, the Registrar shall publish a notice in the *Gazette* that, unless the company files notice of a change of registered agent within thirty days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register and dissolved.

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

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

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

(Inserted by Act 10 of 2002)

Penalty for contravention of sections 41 and 42

45. A company that wilfully contravenes sections 41 or 42 is liable to a penalty of $25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

PART 6

DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

Management by directors

46. The business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

Disqualified directors

47. (1) An individual against whom a disqualification order is made under section 67 of the Companies Act, may not during the period of his disqualification be a director of, or be concerned in the management of, a company incorporated or continued under this Act.

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

(Inserted by Act 10 of 2002)

Election, term and removal of directors

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

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

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

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

(b) a director may resign his office by giving written notice of his resignation to the company and the resignation has effect

from the date the notice is received by the company or from such later date as may be specified in the notice.

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

Number of directors

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

Powers of directors

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

Emoluments of directors

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

Committees of directors

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

(2) Subject to any limitations in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under sections 48 and 58.

Meetings of directors

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

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

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

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

Notice of meetings of directors

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

(2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if a majority of the directors entitled to vote at the meeting have waived the notice of the meeting.

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

Quorum for meetings of directors

55. A meeting of directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate 1/3, or such larger proportion as may be specified in the Memorandum or Articles, of the total number of directors.

Consents of directors

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

Alternates for directors

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

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

Officers and agents

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

(2) Subject to any limitations in the Memorandum or Articles, each officer or agent has such powers and authority of the directors including the power and authority to affix the common seal of the company, as are set forth in the Articles or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with

respect to the matters requiring a resolution of directors under section 48 and this section.

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

Standard of care

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

(2) No provision in the Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Memorandum or Articles or from any personal liability arising from his management of the business and affairs of the company.

Reliance on records and reports

60. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 29, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 71 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

Conflict of interests

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

(a) a company incorporated under this Act; and

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

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

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

(a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and

(b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved—

(i) without counting the vote or consent of any interested director or liquidator; or

(ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.

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

(a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting of members; and

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

(4) Subject to any limitations in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors or liquidators may be counted for purposes of determining whether the meeting is duly constituted under section 55 or otherwise.

Indemnification

62. (1) Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal proceedings any person who—

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, officer or liquidator of the company; or

(b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

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

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

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

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

Insurance

63. A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, officer or liquidator or the company, or who at the request of the company is or was serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 62(1).

PART 7

PROTECTION OF MEMBERS AND CREDITORS

Meetings of members

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

(2) Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50% of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

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

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

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

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

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

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

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

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

(6) *(a)* When a body corporate or an unincorporated association of persons is a shareholder of a company incorporated under this Act, the company must recognize any natural person authorised by resolution of the directors or governing body of that body corporate or association to represent it at meetings of shareholders of the company.

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

Notice of meetings of members

65. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall give not less than seven days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 29.

(2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding an absolute majority of the total number of votes entitled to vote on all matters to be considered at the meeting have waived the notice of the meeting, unless a class or series of shares are entitled to vote thereon as a class or series; in which case, the meeting is valid if the notice has been waived by an absolute majority of the votes of that class or series together with an absolute majority of the remaining votes.

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

Quorum for meetings of members

66. A meeting of members is duly constituted for purposes of a resolution of members, if, at the commencement of the meeting, there are present in person or by proxy 1/3, or such higher proportion as may be specified in the Memorandum or Articles, of the votes of the shares of each class or series of shares entitled to vote as a class or series thereon and 1/3, or such higher proportion as may be specified in the Memorandum or Articles, of the votes of the remaining shares entitled to vote thereon.

Voting by members

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

Consents of members

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

Service of notice on members

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

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

(b) in the case of members holding bearer shares —

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

(ii) in the absence of a provision in the Memorandum or Articles or if the notice, information or written statement can no longer be served as specified in the Memorandum or Articles by publishing the notice, information or written statement in the *Gazette* and in a newspaper published or circulated in Montserrat and a newspaper in the place where the company has its principal office.

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

(Amended by Act 10 of 2002)

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

Service of process, etc. on company

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

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

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

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

Books and records

71. (1) A company must keep accounting records that—

(a) are sufficient to record and explain the transactions of the company; and

(b) will at any time enable the financial position of the company to be determined with reasonable accuracy.

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

(a) minutes of all meetings of—

(i) directors;

(ii) members;

(iii) committees of directors;

(iv) committees of officers;

(v) committees of members;

and

(b) copies of all resolutions consented to by—

(i) directors;

(ii) members;

(iii) committees of directors;

(iv) committees of officers;

(v) committees of members.

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

(4) If the accounting records of a company are kept outside Montserrat, the company must ensure that it keeps at its registered office or at some other place in Montserrat designated by the directors a written record of the place or places outside Montserrat where its accounting records are kept.

(5) A company that wilfully contravenes this section is liable to a penalty of $25 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

(Amended by Act 10 of 2002)

Inspection of books and records

72. (1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purpose, to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

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

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

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

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

Contracts generally

73. (1) Contracts may be entered into on behalf of a company incorporated under this Act as follows—

(a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;

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

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

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

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

Contracts before incorporation

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

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).

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

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

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

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

Contracts for payment or transfer

75. (1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situate, is entered into by a company incorporated under this Act and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property—

(a) upon the death of the person making the designation;

(b) upon the death of another person; or

(c) upon the happening of any other event specified in the contract, agreement, deed or other instrument,

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

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

(a) the designation is revocable or subject to change; or

(b) the claim or property—

(i) is not yet payable or transferable, as the case may be, at the time the designation is made; or

(ii) is subject to withdrawal, collection or assignment by the person making the designation.

Notes and bills of exchange

76. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company—

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

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

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

Power of attorney

77. (1) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of any specified matters, to act as its agent on behalf

of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

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

Authentication or attestation

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

Company without members

79. If at any time there is no member of a company incorporated under this Act, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.

PART 8

ENFORCEMENT

Restraining or compliance order

80. (1) If a company or a director of a company engages, or proposes to engage in conduct that contravenes this Act, the Memorandum or Articles of the company or any unanimous shareholder agreement, the Court may, on the application of a shareholder or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes this Act, the Memorandum or Articles of the company or any unanimous shareholder agreement.

(2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(3) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

(Inserted by Act 10 of 2002)

Derivative actions

81. (1) Subject to subsection (3), the Court may, on the application of a shareholder of a company, grant leave to that shareholder to—

(a) bring proceedings in the name and on behalf of that company; or

(b) intervene in proceedings to which the company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account—

(a) whether the shareholder is acting in good faith;

(b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;

(c) whether the proceedings are likely to succeed;

(d) the costs of the proceedings in relation to the relief likely to be maintained; and

(e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that either—

(a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings as the case may be; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders, not less than twenty eight days notice of an application for leave under subsection (1) must be served on the company which is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).

(6) Except as provided in this section, a shareholder is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

(Inserted by Act 10 of 2002)

Costs of derivative action

82. (1) If the Court grants leave to a shareholder to bring or intervene in proceedings under section 96, it shall, on the application of the shareholder, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(2) If the Court, on an application made by a shareholder under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—

(a) that the company bear such proportion of the costs as it considers to be reasonable; or

(b) that the company shall not bear any of the costs.

(Inserted by Act 10 of 2002)

Powers of Court where leave granted under section 81

83. The Court may, at any time after granting a shareholder leave under section 81, make any order it considers appropriate in relation to proceedings brought by the shareholder or in which the shareholder intervenes, including, without limiting the generality of this subsection—

(a) an order authorising the shareholder or any other person to control the proceedings;

(b) an order giving directions for the conduct of the proceedings;

(c) an order that the company or its directors provide information or assistance in relation to the proceedings;

(d) an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to former and present shareholders of the company instead of to the company.

(Inserted by Act 10 of 2002)

Compromise, settlement or withdrawal of derivative action

84. No proceedings brought by a shareholder or in which a shareholder intervenes with the leave of the Court under section 81, may be settled or compromised or discontinued without the approval of the Court.

(Inserted by Act 10 of 2002)

Personal actions by shareholders

85. A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him as a shareholder.

(Inserted by Act 10 of 2002)

Prejudiced shareholders

86. (1) A shareholder of a company who considers that the affairs of the company have been, are being or are likely to be conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the Court for an Order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders—

(a) requiring the company or any other person to acquire the shareholder's shares;

(*b)* requiring the company or any other person to pay compensation to the applicant;

(c) regulating the future conduct of the company's affairs;

(d) amending the articles or by-laws of the company;

(e) appointing a receiver of the company;

(f) liquidating the company under the supervision of the Court;

(g) directing the rectification of the records of the company;

(h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the articles or by-laws of the company.

(3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made.

(Inserted by Act 10 of 2002)

Representative actions

87. Where a shareholder of a company brings proceedings against the company and other shareholders have the same or substantially the same interest in relation to the proceedings, the Court may appoint that shareholder to represent all or some of the shareholders having the same interest and may, for that purpose, make such order as it thinks fit including, without limiting the generality of this section, an order—

(a) as to the control and conduct of the proceedings;

(b) as to the costs of the proceedings;

(c) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

(Inserted by Act 10 of 2002)

PART 9

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

Interpretation for purposes of Part 7

88. In this Part—

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

"consolidation" means the uniting of two or more constituent companies into a new company;

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

"merger" means the merging of two or more constituent companies into one of the constituent companies;

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

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

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

Merger and consolidation

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

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

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

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

(b) in respect to each constituent company—

(i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation; and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

(d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and

(e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

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

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

(a) the plan of merger or consolidation must be authorised by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, must be given to each member, whether or not entitled to vote on the merger or consolidation;

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation must be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

(d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation must be executed by each company and must contain—

(i) the plan of merger or consolidation and, in the case of a consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;

(ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;

(iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;

(e) the articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register;

(f) upon the registration of the articles of merger or consolidation the Registrar shall within three working days following such registration issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.

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

Merger with subsidiary

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

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

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

(b) in respect to each constituent company—

(i) the designation and number of outstanding shares of each class and series of shares; and

(ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

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

(4) Every member of each subsidiary company to be merged is entitled on demand to a copy of the plan of merger or an outline thereof.

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

(a) the plan of merger;

(b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar; and

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

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

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

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

Effect of merger or consolidation

91. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation.

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

(a) the surviving company or the consolidated company in so far as is consistent with its Memorandum and Articles as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;

(c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;

(d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs—

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

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

Merger or consolidation with foreign company

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

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

(a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside Montserrat shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Montserrat it must submit to the Registrar—

(i) an agreement that a service of process may be effected on it in Montserrat in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);

(iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 89 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Montserrat the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 89 except in so far as the laws of the other jurisdiction otherwise provide.

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

outside Montserrat the merger or consolidation is effective as provided by the laws of that other jurisdiction.

Disposition of assets

93. Any sale, transfer, lease, exchange or other disposition of more than 50% of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described in section 9(2), if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

(a) the proposed sale, transfer, lease, exchange or other disposition must be approved by the directors;

(b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorised by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption of minority shares

94. (1) Subject to any limitations in the Memorandum or Articles—

(a) members holding 90% of the votes of the outstanding shares entitled to vote; and

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

on a merger or consolidation under section 89, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

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

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

Arrangements

95. (1) In this section, **"arrangement"** means—

(a) an amendment to the Memorandum or Articles;

(b) a reorganization or reconstruction of a company incorporated under this Act;

(c) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(d) a separation of two or more businesses carried on by a company incorporated under this Act;

(e) a sale, transfer, exchange or other disposition of any part of the property, assets or business of a company incorporated under this Act to any person in exchange for shares, debt obligations or other securities of that other person, or money or other property, or a combination thereof;

(f) a sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company incorporated under this Act held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;

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

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

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

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

(4) Upon an application made to it under subsection (3) the Court may make any interim or final order and may—

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

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

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value

of his shares, debt obligations or other securities under section 96;

(d) conduct a hearing and permit any interested person to appear; and

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

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

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

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

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

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

(a) the plan of arrangement;

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

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

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

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

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

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

Rights of dissenters

96. (1) A member of a company incorporated under this Act is entitled to payment of the fair value of his shares upon dissenting from—

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or substantially similar shares;

(b) a consolidation, if the company is a constituent company;

(c) a sale, transfer, lease, exchange or other disposition of more than 50% of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—

(i) a disposition pursuant to an order of the Court;

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or

(iii) a transfer pursuant to the power described in section 9(2);

(d) a redemption of his shares by the company pursuant to section 94; and

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

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

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

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

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

(a) his name and address;

(b) the number and classes or series of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares,

and a member who elects to dissent from a merger under section 90 must give to the company a written notice of his decision to elect to dissent within twenty days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 90.

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

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

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

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

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers, together shall designate a third appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

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

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

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

PART 10

CONTINUATION

Continuation

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

(a) articles of continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved—

(i) by a majority of the directors or the other persons who are charged with exercising the powers of the company; or;

(ii) in such other manner as may be established by the company for exercising the powers of the company;

(b) the articles of continuation must contain—

(i) the name of the company and the name under which it is being continued;

(ii) the jurisdiction under which it is incorporated;

(iii) the date on which it was incorporated;

(iv) the information required to be included in a Memorandum under section 12(1); and

(v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;

(c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be

submitted to the Registrar who must retain and register them in the Register; and

(d) upon the registration of the articles of continuation the Registrar shall within three working days of such registration issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(2) A company incorporated under the laws of a jurisdiction outside Montserrat is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary of the laws of the jurisdiction under which it is incorporated.

Provisional registration

98. (1) A company incorporated under the laws of a jurisdiction outside Montserrat that is permitted under section 97 to continue as a company incorporated under this Act, may, after complying with section 97(1)*(a)* and *(b)*, submit to the Registrar the following documents—

(a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English language, or if written in a language other than the English language accompanied by a certified translation into the English language; and

(b) a written authorisation designating one or more persons who may give notice to the Registrar, by telex, telegram, cable or by registered mail, that the articles of continuation should become effective.

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

(3) Upon receipt of the notice referred to in subsection (1), the Registrar shall—

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

(b) within three working days of such registration issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

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

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

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

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

Certificate of continuation

99. A certificate of continuation issued by the Registrar under section 97(1)*(d)* or under section 98(3) is *prima facie* evidence of compliance with all requirements of this Act in respect of continuation.

Effect of continuation

100. (1) From the time of the issue by the Registrar of a certificate of continuation under section 97(1)*(d)* or under section 98(3)—

(a) the company to which the certificate relates—

(i) continues to be a body corporate, incorporated under this Act, under the name designated in the articles of continuation;

(ii) is capable of exercising all powers of a company incorporated under this Act; and

(iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside Montserrat;

(b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;

(c) property of every description, including choses in action and the business of the company, continue to be vested in the company; and

(d) the company continues to be liable for all of its claims, debts, liabilities and obligations.

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

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

(b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 97(1)*(d)* or under section 98(3) by or against the company, or against a member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

(3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 97(1)*(d)* or under section 98(3) in respect to the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid shall be paid up no later than one year after the date of the issue of the certificate of continuation and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.

(4) If, at the time of the issue by the Registrar of a certificate of continuation under section 97(1)*(d)* or under section 98(3) any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act then—

(a) the provisions of the Memorandum and Articles will continue to govern the company until the provisions are amended to accord with this Act or for a period of two years after the date of the issue of the certificate of continuation, whichever is the sooner;

(b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of two years after the date of the issue of the certificate of continuation, whichever is the sooner; and

(c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act not later than a period of two years after the date of the issue of the certificate of continuation.

Continuation under foreign law

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

(2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside Montserrat

does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside Montserrat permit the continuation and the company has complied with those laws.

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

(a) the company is liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Montserrat;

(b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against a member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Montserrat; and

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

PART 11

WINDING-UP, DISSOLUTION AND STRIKING-OFF

Compulsory winding-up and dissolution

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

Voluntary winding-up and dissolution

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

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

Powers of directors in a winding-up and dissolution

104. Upon the commencement of a winding-up and dissolution required under section 102 or permitted under section 103, the directors may only—

(a) authorise a liquidator, by a resolution of directors, to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and

(b) determine to rescind the articles of dissolution as permitted under section 108.

Duties of liquidator

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

(a) to identify all assets of the company;

(b) to identify all creditors of and claimants against the company;

(c) to pay or provide for the payment of or to discharge all claims, debts, liabilities and obligations of the company in the following order of priority—

(i) in satisfaction of all outstanding fees, taxes, licence fees and penalties due to the Registrar;

(ii) in satisfaction of the liquidators fees and costs approved by the Court;

(iii) secured creditors;

(iv) unsecured creditors;

(v) proprietor's loans;

(d) to distribute any surplus assets of the company remaining after the completion of the payments and provisions referred to in subsection (1)*(c)* to the members in accordance with the Memorandum and Articles;

(e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) to send a copy of the statement of account to all members if so required by the plan of dissolution required by section 107.

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

Powers of liquidator

106. (1) In order to perform the duties imposed on him under section 105, a liquidator has all the powers of the company that are not reserved to the

members under this Act or in the Memorandum or Articles, including, but not limited to, the power—

(a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;

(b) to sell any assets of the company at public auction or by private sale without any notice;

(c) to collect the debts and assets due or belonging to the company;

(d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

(e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;

(f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;

(g) to retain solicitors, accountants and other advisers and appoint agents;

(h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors permitted under section 104, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

(i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

(j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

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

Procedure on winding-up and dissolution

107. (1) The directors of a company required under section 102 or proposing under section 103 to wind-up and dissolve the company must approve a plan of dissolution containing—

(a) a statement of the reason for the winding-up and dissolving;

(b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;

(c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of dissolution;

(d) a statement of the estimated time required to wind-up and dissolve the company;

(e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company;

(f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and

(g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding-up and dissolution is being effected in a case where section 103(2) is applicable—

(a) the plan of dissolution must be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, whether or not entitled to consent to the plan of dissolution.

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

(a) the plan of dissolution; and

(b) the manner in which the plan of dissolution was authorised.

(4) Articles of dissolution must be submitted to the Registrar who must retain and register them in the Register and within thirty days immediately following the date on which the articles of dissolution are

submitted to the Registrar, the company must cause to be published, in the *Gazette*, in a publication of general circulation in Montserrat and in a publication of general circulation in the country or place where the company has its principal office, a notice stating—

(a) that the company is in dissolution;

(b) the date of commencement of the dissolution; and

(c) the names and addresses of the liquidators.

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

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall—

(a) strike the company off the Register; and

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

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

(a) the certificate is *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and

(b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Within fourteen days immediately following the date on which the certificate of dissolution has been issued by the Registrar under subsection (6), the liquidator shall cause to be published in the *Gazette*, in a publication of general circulation in Montserrat and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck-off the Register.

(9) A company that wilfully contravenes subsection (4) is liable to a penalty of $50 for every day or part thereof during which the contravention continues, and a director or liquidator who knowingly permits the contravention is liable to a like penalty.

Rescission of winding-up and dissolution

108. (1) In the case of a winding-up and dissolution permitted under section 103, a company may, prior to submitting to the Registrar a notice specified in section 107(4), rescind the articles of dissolution by—

(a) a resolution of directors in the case of a winding-up and dissolution under section 103(1); or

(b) a resolution of members in the case of a winding-up and dissolution under section 103(2).

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

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

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

109. (1) Where—

(a) the directors or, as the case may be, the members of a company that is required under section 102 or permitted under section 103 to wind-up and dissolve, at the time of the passing of the resolution to wind-up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or

(b) the liquidator after his appointment has reason so to believe,

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

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

Winding-up and dissolution by the Court

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

Receivers and managers

111. (1) The provisions of the Companies Act regarding receivers and managers govern *mutatis mutandis* the appointment, duties, powers and

liabilities of receivers and managers of the assets of any company incorporated under this Act.

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

Striking-off

112. (1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business Company under section 5, the Registrar must serve on the company a notice that the name of the company may be struck-off the Register if the company no longer satisfies those requirements.

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

(3) If the Registrar—

(a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or

(b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection,

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

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

(5) If a company has failed to pay the increased licence fee due under section 126(2), the Registrar shall, within six calender months following the date specified in section 126(1), publish in the *Gazette* and serve on the company a notice stating the amount of the increased licence fee due under section 126(2) and stating that the name of the company will be struck-off the Register if the company fails to pay the increased licence fee on or before 31 December next ensuing.

(6) If a company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by 31 December referred to in that

subsection, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing.

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

Restoration to Register

113. (1) If the name of a company has been struck-off the Register under section 112(4), the company, or a creditor, member or liquidator thereof, may apply to the Court to have the name of the company restored to the Register.

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

(a) at the time the name of the company was struck-off the Register, the company did satisfy the requirements prescribed for an International Business Company under section 5; and

(b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees due under section 125 and all licence fees due under section 126 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck-off the Register.

(3) If the name of a company has been struck-off the Register under section 112(6), the company, or a creditor, member of liquidator thereof, may, within three years immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of—

(a) all fees due under section 125;

(b) the licence fee stated in the notice referred to in section 112(5); and

(c) a licence fee in the amount stated in the notice referred to in paragraph *(b)* for each year or part thereof during which the name of the company remained struck-off the Register,

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

(4) For purposes of this Part, the appointment of an official receiver under section 115 operates as an order to restore the name of the company to the Register.

Effect of striking-off

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

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of the company; or

(c) act in any way with respect to the affairs of the company.

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

(a) make application for restoration of the name of the company to the Register;

(b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that the name of a company is struck-off the Register does not prevent—

(a) the company from incurring liabilities;

(b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; or

(c) the appointment by the Court of an official liquidator for the company under section 115.

Appointment of official liquidator

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

Dissolution of company struck-off

116. (1) If the name of a company has been struck-off the Register under section 112 and remains struck-off continuously for a period of three years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Crown to do so, apply to the Court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to—

(a) identifying and taking possession of all assets of the company;

(b) calling for claims by advertisement in the *Gazette* and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than ninety days immediately following the date of the advertisement; and

(c) applying those assets that he recovers in the following order of priority—

(i) in satisfaction of all outstanding fees, taxes, licence fees and penalties due to the Registrar;

(ii) secured creditors;

(iii) unsecured creditors;

(iv) proprietors loans;

(v) to the members in accordance with the Memorandum and Articles.

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

(4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and may admit, reject or fix claims on the basis of the evidence submitted to him.

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

(6) No liability attaches to an official liquidator—

(a) to account to creditors of the company who have not submitted claims within the time allowed by him; or

(b) for any failure to locate any assets of the company.

PART 12

INVESTIGATION OF COMPANIES

Investigation order

117. (1) A shareholder of a company, or the Registrar, may apply, *ex parte* or upon such notice as the Court may require, to the Court for an order directing that an investigation be made of the 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;

(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 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 parte* application under this section shall be heard *in camera.*

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorisation of the Court or the written consent of the company that is being, or to be, investigated.

(Inserted by Act 10 of 2002)

Court powers

118. (1) In connection with an investigation under this Part 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 authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(e) an order requiring any person to produce documents or records to the inspector;

(f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;

(g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;

(h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(i) an order requiring an inspector to make an interim or final report to the Court;

(j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;

(k) an order requiring an inspector to discontinue an investigation; or

(l) an order requiring the 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 Part.

(Inserted by Act 10 of 2002)

Inspector's powers

119. (1) An inspector under this Part 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 section 117(1).

(Inserted by Act 10 of 2002)

***In camera* hearing**

120. (1) An interested person may apply to the Court for an order that a hearing conducted by an inspector under this Part 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 Part may appear and be heard in person or by an attorney-at-law.

(Inserted by Act 10 of 2002)

Incriminating evidence

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

prosecution for perjury in giving the evidence, or a prosecution under section 95 of the Penal Code in respect of the evidence.

(Inserted by Act 10 of 2002)

Privilege absolute

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

(Inserted by Act 10 of 2002)

Client privileges

123. Nothing in this Part affects the privileges that exist in respect of an attorney-at-law and his client.

(Inserted by Act 10 of 2002)

Inquiries

124. The Registrar may make of any person any inquiries that relate to compliance with this Act by any persons.

(Inserted by Act 10 of 2002)

PART 13

FEES AND PENALTIES

Fees

125. There shall be paid to the Registrar, fees as follows—

(a) $300[2] upon the registration by the Registrar of a company incorporated under this Act the authorised capital of which does not exceed $50,000;

(b) $1,000 upon the registration by the Registrar of a company incorporated under this Act the authorised capital of which exceeds $50,000;

(c) $25 upon the registration by the Registrar of an amendment to the Memorandum or Articles of a company incorporated under this Act, but $700 in the case of an amendment to the Memorandum to increase the authorised capital from $50,000 or less to more than $50,000;

(d) $500 upon the registration by the Registrar of articles of merger or consolidation, but $700 in the case of articles of merger or consolidation that also constitute the Memorandum of a company the authorised capital of which exceeds $50,000 or that amend the Memorandum of a

[2] Under section 2(2), all monetary amounts in this Act are U.S. dollars currency.

surviving company to increase the authorised capital from $50,000 or less to more than $50,000;

(e) $500 upon the registration by the Registrar of articles of arrangements, but $700 in the case of articles of arrangement that also constitute the Memorandum of a company the authorised capital of which exceeds $50,000 or that amend the Memorandum of a company to increase the authorised capital from $50,000 or less to more than $50,000;

(f) $100 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act the authorised capital of which does not exceed $50,000;

(g) $1,000 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act the authorised capital of which exceeds $50,000;

(h) $500 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act the authorised capital of which does not exceed $50,000;

(i) $1,000 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act the authorised capital of which exceeds $50,000;

(j) $100 upon the registration by the Registrar of articles of dissolution;

(k) $100 upon the registration by the Registrar of a resolution rescinding articles of dissolution;

(l) $25 upon the issue by the Registrar of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing, other than at the time of the registration of a company incorporated under this Act or at the time of the merger, consolidation, arrangement or dissolution, as the case may be;

(m) $15 upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or a part of a document, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing;

(n) $10 for an inspection of the documents kept by the Registrar pursuant to this Act;

(o) $300 upon the restoration by the Registrar to the Register of a company incorporated under this Act the name of which was struck-off the Register; and

(p) $25 for the reservation of a name as provided for in section 11(7).

Licence fees and taxation

126. (1) A company the name of which is on the Register on the date in any year that is the anniversary date of its incorporation shall, on or before the end of the month in which the anniversary date of its incorporation falls, pay to the Registrar either an annual licence fee calculated as follows—

(a) $300 if its authorised capital does not exceed $50,000;

(b) $1,000 if its authorised capital exceeds $50,000, or

the company may, in respect of any calendar year subsequent to its year of incorporation and in substitution of the licence fees under subsection (1) hereof, elect to pay a corporate tax calculated at the rate of 1.75% of its net profit for that calendar year, such profit to be computed and assessed in accordance with the provisions of the Income and Corporation Tax Act. Any election pursuant to this section is to be made in writing to the Registrar before 31 January, in respect of that calendar year and such election is to be accompanied by an election fee of $1,000. In the case of the year in which a company is incorporated under this Act, an election pursuant to this section must be made in writing to the Registrar within thirty days from the date of incorporation of the company and such an election must be accompanied by the election fee of $1,000 as aforementioned.

(2) If a company fails to pay the amount due as the licence fee under subsection (1) by the date specified therein, the licence fee increases by 100% of that amount by way of penalty.

(Amended by Act 6 of 1992)

Penalties to be paid to Registrar

127. Any penalty incurred under this Act shall be paid to the Registrar.

Recovery of penalties, etc.

128. Any fee, licence fee or penalty payable under this Act that remains unpaid for thirty days after the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.

Company struck-off liable for fees, etc.

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

Fees, etc. to be paid into Consolidated Fund

130. All fees, licence fees and penalties paid under this Act shall be paid by the Registrar into the Consolidated Fund.

Fees payable to Registrar

131. (1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until that fee has been paid.

(2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until all fees prescribed as payable by the company under the Companies Act have been paid and, in addition, in the case of a company incorporated under the Companies Act that continues its incorporation under this Act not later than 29 April in any year such sum as would have been payable by that company under the Companies Act if that company had not so continued its incorporation under this Act.

PART 14

INCOME TAXES AND STAMP TAXES

Exemptions from tax, etc.

132. (1) Notwithstanding any provision of the Income and Corporation Tax Act—

(a) a company incorporated under this Act;

(b) all dividends, interest, rents, royalties, compensations and other amounts paid by the company to persons who are not persons resident in Montserrat;

(c) capital gains realized with respect to any shares, debt obligations or other securities of a company incorporated under this Act by persons who are not persons resident in Montserrat,

are exempted from all provisions of the Income and Corporation Tax Act, the Exchange Control Act, the Foreign Currency Levy Act and the Stamp Act, such exemption to continue for a period of not less than twenty five years from the date of incorporation under this Act.

(2) When the Governor acting on the advice of Cabinet is satisfied that a company registered under this Act requires the services of specially qualified persons in order to enable it to conduct its business effectively from within Montserrat and that it is neither able to acquire those services in Montserrat nor acquire them elsewhere without special benefits being made available for them, the Cabinet may, by order in a special case, provide that these persons—

(a) be exempted from specified taxes in Montserrat;

(b) be permitted to be paid in a foreign currency into a trust account without being liable to be taxed thereon or on the interest thereon; and

(c) be permitted to be paid in some prescribed manner in another currency or otherwise without being liable to be taxed thereon in Montserrat.

(Amended by Act 9 of 2011)

PART 15

MISCELLANEOUS

Regulations

133. The Governor acting on the advice of Cabinet may make regulations with respect to the duties to be performed by the Registrar under this Act and in so doing may prescribe the place where the office for the registration of International Business Companies is located. *(Amended by Act 9 of 2011)*

Form of certificate

134. Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the Governor acting on the advice of Cabinet may approve. *(Amended by Act 9 of 2011)*

Certificate of good standing

135. (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that—

(a) the name of the company is on the Register; and

(b) the company has paid all fees, licence fees and penalties due and payable.

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

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

(b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;

(c) the company is in the process of being wound up and dissolved; or

(d) any proceedings to strike the name of the company off the Register have been instituted.

Inspection of documents

136. (1) Except as provided in section 98(2), a person may—

(a) inspect the documents kept by the Registrar pursuant to this Act; and

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

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissable in evidence in any proceedings as if it were the original document.

Jurisdiction

137. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities or a company incorporated under this Act is in Montserrat.

Declaration by Court

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

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

Judge in Chambers

139. A judge of the High Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

Confidential Information Act

140. The Confidential Information Act shall apply to all companies incorporated under this Act, and to all directors, officers, employees, advisers, bankers, agents and brokers employed by companies incorporated under this Act.

INTERNATIONAL BUSINESS COMPANIES (FORMS AND CERTIFICATES) REGULATIONS

- SECTIONS 112, 113 AND 114

(S.R.O. 28/1986 and Act 9 of 2011)

Commencement

[26 August 1986]

Short title

1. This Order may be cited as the International Business Companies (Forms and Certificates) Order.

Forms and certificates

2. The forms and certificates in the Schedule to this Order are hereby approved by the Governor acting on the advice of Cabinet for issue by the Registrar of Companies. *(Amended by Act 9 of 2011)*

SCHEDULE

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 1

REGISTRAR OF COMPANIES, MONTSERRAT

DATE: .....

Dear Sir,

CHANGE OF REGISTERED AGENT

Please note that with effect from the ..... day of ..... that the name and address of the Company's Registered Agent will be:

NAME: .....

ADDRESS: .....

.....

.....

TELEPHONE NO.: .....

until further notice.

.....
Company Secretary

COMPANY NAME .....

COMPANY NUMBER .....

IBC 42

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 2

GOVERNMENT OF MONTSERRAT

ARTICLES OF ARRANGEMENT

I, ... , Registrar of Companies for Montserrat,

do hereby certify, pursuant to the International Business Companies Act, section 95, that …… has registered with me on the ..... day of .....…....…….....…., 20..... to my satisfaction the Articles of Arrangement approved by the Court on ..... day of .....……., 20….. and that the details have been entered by me in the company records on the ..... day of ....., 20..... .

Given under my hand and seal at Montserrat the ..... day of ....., 20..... .

Company Number .....

IBC 95

.....……..
REGISTRAR OF COMPANIES
MONTSERRAT, W.I.

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 3

GOVERNMENT OF MONTSERRAT

CERTIFICATE OF MERGER OR CONSOLIDATION

I, ... , Registrar of Companies for Montserrat, do HEREBY CERTIFY, pursuant to the International Business Companies Act, section 89, that all the formalities of the said Act in respect of the companies listed over, have been complied with by ..... or consolidated company on the ..... day of ....., 20….. and that the details have been entered by me in the company's records on the ..... day of ....., 20..... .

Given under my hand and seal at Montserrat the ..... day of ....., 20..... .

Company Number .....

IBC 89 (1)

.....
REGISTRAR OF COMPANIES
MONTSERRAT, W.I.

Companies comprising the merger or consolidation:

NAME	NUMBER
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 4

GOVERNMENT OF MONTSERRAT

CERTIFICATE OF DISSOLUTION

I, ... , Registrar of Companies for Montserrat, DO HEREBY CERTIFY, pursuant to the International Business Companies Act, section 107 that ..... has been dissolved on the ..... day of .....,20..... and that it has been duly noted on my records on the ..... day of ....., 20.... .

Given under my hand and seal at Montserrat the ..... day of ....., 20.... .

Company Number .....

.....
REGISTRAR OF COMPANIES
MONTSERRAT, W.I.

IBC 107 (7)

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 5

GOVERNMENT OF MONTSERRAT

CERTIFICATE OF GOOD STANDING

I, ... , Registrar of Companies for Montserrat, DO HEREBY CERTIFY, pursuant to the International Business Companies Act, section 135 that ..... is of good standing.

In particular the Company—

1. §has/has not submitted to the Registrar articles of merger or consolidation that have not yet become effective.

2. §has/has not submitted to the Registrar articles of arrangement that have not yet become effective.

3. §is/is not in the process of being wound up and dissolved.

4. §proceedings/no proceedings to strike the name of the Company off the Register have been instituted.

(§ delete as appropriate)

Given under my hand and seal at Montserrat the ..... day of ....., 20..... .

Company Number .....

IBC 135

.....
REGISTRAR OF COMPANIES
MONTSERRAT, W.I.

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 6

GOVERNMENT OF MONTSERRAT

CERTIFICATE OF INCORPORATION

(CHANGE OF NAME)

I, ... , Registrar of Companies for Montserrat, DO HEREBY CERTIFY, pursuant to the International Business Companies Act, section 11(5) that all the formalities required by the said Act have been complied with by ..... previously registered as ..... a company formed in Montserrat on the ..... day of ....., 20……. . The new name was registered by me on the International Business Company register of the ..... day of ....., 20..... .

Given under my hand and seal at Montserrat the ..... day of ....., 20…….. .

Company Number .....

IBC 11 (5)

.....

REGISTRAR OF COMPANIES
MONTSERRAT, W.I.

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 7

GOVERNMENT OF MONTSERRAT

INTERNATIONAL BUSINESS COMPANIES ACT

APPLICATION FOR:

1. **AVAILABILITY OF COMPANY NAME**
2. **CHANGE OF NAME**
3. **RESERVATION OF COMPANY NAME**

(delete as appropriate)

Proposed Name:

.....

If change of name, give present .....

name and reason for change .....

…….....

Significance of name (if any) .....

If name is similar to existing .....
company give details, i.e. .....
name and place of .....
registration and connection .....
with that company .....
.....

Principal activity of company .....

Applicant's Name .....

Address ..... Tel. No.: .....

Ref.: .....

_____

Montserrat

INTERNATIONAL BUSINESS COMPANIES ACT

FORM 8

GOVERNMENT OF MONTSERRAT

APPLICATION FOR COMPANY NAME

Proposed Name:.....

.....

Applicant's Name: ..... Registrar's Ref.: .....

Address:.....

.....

.....

Reserved (See Note 16) ..... Refused (See Note .....)

IBC 11

_____

GOVERNMENT OF MONTSERRAT

REGISTRAR OF COMPANIES, MONTSERRAT

NOTES RE COMPANY NAME APPLICATION

Under the International Business Companies Act the Registrar is empowered to refuse a name if he considers it in any way undesirable.

The following notes are given for guidance of applicants though it must be understood that they are in no way exhaustive.

1. Application for reservations of a name must be accompanied by the appropriate fee.

2. A name will be refused if it is too like that of an existing company, body corporate or business name on the Montserrat Registers, unless the existing company changes its name or is dissolved or the existing business name registration is cancelled.

3. A name will be refused if it is too like that of an existing company, or firm known to be registered in any other country where such name could imply a connection therewith, unless the applicant has justifiable links with such company or firm.

4. A name will be refused if it is misleading or too pretentious, for example if the name of a company with small resources suggests that it is trading on a great scale or over a wide field. Similarly a name which consists solely of words which represent a general description of the trade or business may be refused.

5. Names will not be allowed which:

(i) Suggest a connection with the Crown or members of the Royal Family or suggest Royal Patronage (including names containing words such as "**Royal**", "**King**", "**Princess**", or "**Crown**").

(ii) Suggest a connection with the Government of Montserrat, Her Majesty's Government or a department thereof or with a municipality or other local authority or with a society or body incorporated by Royal Charter.

(iii) Includes the words "**Bank**", "**Building Society**", "**Chamber of Commerce**", "**Chartered**", "**Cooperative**", "**Imperial**", "**municipal**", or a word conveying a similar meaning.

6. The use of Montserrat or any variation as the predominant name will not ordinarily be allowed if when taken as a whole the name would give the unjustified impression that the Company was pre-eminent in its particular field of activity in the Island. Similar considerations apply to names of other prominent places.

7. Names which include proper names which are not the names of the beneficial owners (or initials which have no significance) will not be allowed (except for

valid reasons). A married woman may be permitted the use of her maiden name when she is the beneficial owner of the company but the maiden name of female relatives who are not the beneficial owners will not generally be regarded as sufficiently significant.

8. Applicants are advised that if they wish to form companies whose names include words to which any of the foregoing paragraphs are applicable consideration of the application must necessarily take longer than would otherwise be the case and to avoid delay, the fullest details should be given for the reason for the selection of the name.

9. The words mentioned in these notes should be understood to include all cognate expressions (e.g. Bank – Bankers, Banking, Insurance – Assurance).

10. The application form on the reverse of these notes must be used but any additional information the applicant feels will be of help can be attached.

11. Applicants are advised to consult the Registrar of Trade Marks when considering applications for a proposed new company name particularly if the proposed name represents an invented word. The acceptance of a particular name is not an indication by the Registrar that no Trade Mark rights exist in it.

12. Applicants are advised to show on name application forms, in as much detail as possible, the significance of the name selected. This will avoid delay.

13. Applicants are advised not to incur expenses in connection with a reserved name before they receive confirmation of its availability.

14. The Registrar is unable to reserve an available name other than by payment of the appropriate fee.

15. Registration of a company, the name of which includes words generally descriptive of a Trade or Business does not give any right or implied right to the exclusive use of such word or words.

16. Where the Registrar has at the present moment no objection to the use of the above name as a name for a Limited Company the counterfoil will be returned marked **"Reserved"**. The Registrar reserves the right to reconsider his decision if he should become aware before registration of the company (or in the case of a Change of Name the registration of the resolution) of circumstances which would make the use of the name undesirable. For that reason it is inadvisable to undertake final printing of notepaper, etc., until incorporation has been effected. When the name is not reserved the counterfoil will be returned marked **"refused"** and the reason for the refusal will be shown by reference to the number to these notes.

Please quote the Registrar's reference on all enquiries relating to the application prior to incorporation.

———————

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