

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2006 No. 84**

**BVI BUSINESS COMPANIES ACT  
(No. 16 of 2004)**

**BVI BUSINESS COMPANIES (AMENDMENT OF SCHEDULES)  
ORDER, 2006**

**ARRANGEMENT OF SECTIONS**

*Sections*

- 1... Short title and commencement.
- 2... Schedule 1 amended.
- 3... Schedule 2 repealed and replaced.
- 4... Schedule 3 amended.

**SCHEDULE 1**

**REPEAL AND REPLACEMENT OF**

**PARTS II AND III OF SCHEDULE 1 OF THE ACT**

**“PART II – PENALTIES**

- 1....Penalty payable by company for late payment of annual fee.
- 2....Penalty payable by foreign company for late payment of annual fee.

**PART III**

**ADDITIONAL PROVISIONS**

**WITH REGARD TO FEES AND PENALTIES**

- 3....Interpretation for this Part.
- 4...Date annual fee due, foreign company.
- 5...Date annual fee due, company.
- 6...Meaning of annual fee.
- 7...Application of paragraph 5 to former Act companies.
- 8...Exception to paragraph 7.

- 9....Interpretation for paragraphs 10 to 12.
- 10....Increased fee payable by bearer share company.
- 11...Reduced annual fee payable where all bearer shares held by qualifying custodian.
- 12...Grandfathered bearer share companies.
- 13...Memorandum ceases to prohibit issue of bearer shares etc.
- 14...Fee payable by restricted purposes company.
- 15...Insolvency Act liquidator appointed.
- 16...Company authorised to issue unlimited number of shares.

## **SCHEDULE 2**

### **REPEAL AND REPLACEMENT OF SCHEDULE 2 OF THE ACT**

#### **“SCHEDULE 2**

- 1....Interpretation.
- 2....Application by former Act company to re-register under this Act.
- 3....Regulations may prescribe model articles.
- 4....Circumstances where adoption of new memorandum by CapCo not reduction .capital
- 5... Re-registration by the Registrar.
- 6... Former Act companies automatically re-registered under this Act.
- 7... IBC re-registered as company limited by shares.
- 8... Type of company on re-registration of CapCo.
- 9... Certificate of registration where former Act company re-registered automatically.
10. .Scope of this Part.
11. .Interpretation for this Part.
12. .Company may disapply this Part.
13. .Memorandum.
14. .Amendment of memorandum to prohibit issue etc. of bearer shares.
15. .Memorandum not required to be amended on change in registered office or registered agent.
16. Scope of this Division.
17. .Shares to be fully paid.
18. .Forfeiture of shares.
19. .Amount of consideration for shares.
20. .Authorised capital in several currencies.
21. .Capital and surplus accounts.
22. .Dividend of shares.
23. .Increase or reduction of share capital.
24. ..Division and combination.
25. ..Acquisition of own shares.
26. ..Treasury shares disabled.
27. ..Increase or reduction of capital.

28. .Dividends.
29. .Appreciation of assets.
30. .Scope of this Division.
31. .Annual fee payable.
32. .Notice of increase or decrease in authorised capital.
33. .Insolvency Act liquidator appointed.
34. .Interpretation for and scope of this Division.
35. .Existing bearer shares.
36. .Redemption of existing bearer shares.
37. .Application for appointment of liquidator.

## **PART V**

### **TRANSITIONAL PROVISIONS APPLYING TO IBCS THAT ARE RE-REGISTERED UNDER PART II OR PART III**

38. .Registration of charges created prior to commencement date.

## **Part VI**

### **Transitional Provisions Applying to CapCos Re-Registered Under this Schedule**

#### **Division 1 – CapCos automatically re-registered under Part III**

39. .Scope of this Division.
40. .Company may disapply this Division.
41. .Memorandum and articles.
42. .Companies having directors with unlimited liability.
43. .Provisions in former Act relating to reduction of capital to continue to have effect.
44. .Shares.
45. .Notice of increase in capital and reserve capital.
46. .Registered office and registered agent.
47. .General meeting and special resolution.
48. .Annual fees payable by re-registered CapCo.

#### **Division 2 – CapCos re-registered under Part II or III**

49. .Scope of this Division.
50. .Dispensation for required part of company name.
51. .Provisions of Companies Act continuing to have effect.

## **Part VII**

### **Voluntary Liquidation and Strike off**

52. .Interpretation for this part.
53. .CapCo may enter into voluntary liquidation.
54. .Winding up of unregistered companies.
55. .Winding up of IBC commenced before re-registration date.
56. .Dissolution of former Act companies.
57. .Order declaring dissolution of former Act company void.
58. .Restoration of CapCo or IBC to register.
59. .Struck off company liable for fees and penalties.
60. .Sections of this Act having effect.
61. .Effect of re-registration under this Act.
62. .Seals of re-registered companies.
63. .Registrar and Deputy and Assistant Registrars of Companies.
64. .References to companies in other enactments.

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2006 No. 84**

**BVI BUSINESS COMPANIES ACT  
(No. 16 of 2004)**

**BVI BUSINESS COMPANIES (AMENDMENT OF SCHEDULES)  
ORDER, 2006**

[Gazetted 30<sup>th</sup> November, 2006 ]

The Executive Council, in exercise of the powers conferred by section 249(1) of the BVI Business Companies Act, 2004 (No. 16 of 2004) and on the advice of the Financial Services Commission makes the following Order:

**1.** (1) This Order may be cited as the BVI Business Companies (Amendment of Schedules) Order, 2006. Short title and commencement.

(2) The provisions of this Order come into operation as follows:

(a) paragraphs 2(a), 2(b) and 4, with effect from 8<sup>th</sup> December 2006; and

(b) the remaining provisions of this Order, with effect from 1 January 2006.

**2.** Schedule 1 of the BVI Business Companies Act, 2004 (referred to in this Order as “the Act”) is amended No. 16 of 2004  
Schedule 1  
amended.

(a) by inserting in the table set out in Part I in the correct numerical order, the following fee:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
“207A	For the registration of a Court Order terminating a voluntary liquidation.	100.00”;

(b) in the table set out in Part I, in respect of the fee payable under section 40, by deleting the text in column 2 and the figure “750” in column 3 and substituting the following:

Column 2

Column 3

“For filing a notice of change in the number of shares a company is authorised to issue,

(a) where the number of shares is increased from 50,000 or less to more than 50,000 750.00

(b) in any other case 25.00”;

(c) in Column 2 of the table set out in Part I, in respect of the annual fee payable by a company, by deleting the words “specified in paragraph 1 of Part III” and substituting the words “specified in Part III”; and

(d) by repealing Parts II and III and substituting Parts II and III as set out in Schedule 1 to this Order.

Schedule 2  
repealed and  
replaced.

**3.** Schedule 2 of the Act is repealed and replaced with the Schedule set out in Schedule 2 to this Order.

Schedule 3  
amended.

Cap. 285

**4.** Schedule 3 of the principal Act is amended in the fourth column of the table of enactments repealed or amended, by deleting the date on which the repeal of the Companies Act becomes effective (1 January 2007) and substituting “1 January 2008”.

**SCHEDULE 1**

**REPEAL AND REPLACEMENT OF**

**PARTS II AND III OF SCHEDULE 1 OF THE ACT**

**“PART II – PENALTIES**

**1.** If a company fails to pay the annual fee payable under Part I of this Schedule or under paragraph 31 or 48 of Schedule 2 on or before the date on which the annual fee is due, it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows: Penalty payable by company for late payment of annual fee.

- (a) if the fee is paid before the expiration of two months after the date when the fee is due, the penalty payable shall be equal to ten per cent of the annual fee due; or
- (b) if the fee is paid on or after the expiration of two months after the date when the fee is due, the penalty payable shall be equal to fifty per cent of the annual fee due.

**2.** If a foreign company fails to pay the annual fee payable under Part I of this Schedule on or before 31 March in any year it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows: Penalty payable by foreign company for late payment of annual fee.

- (a) if the fee is paid on or before 31 May in that year, the penalty payable shall be \$30.00; or
- (b) if the fee is paid on or after 1 June in that year, the penalty payable shall be \$150.00.

**PART III  
ADDITIONAL PROVISIONS  
WITH REGARD TO FEES AND PENALTIES**

**3.** In this Part, Interpretation for this Part.

“CapCo” means a former Act company that was incorporated under the Companies Act and that has not been continued under the International Business Companies Act; and Cap. 285

“IBC” means a former Act company that was incorporated, continued or registered as a consolidated company under the International Business Companies Act.

Cap. 291

Date annual fee due, foreign company.

**4.** The annual fee of a foreign company registered under Part XI of the Act is due on 31<sup>st</sup> March in each year, commencing in the year following its registration.

Date annual fee due, company.

**5.** Subject to paragraphs 7 and 8, the date when the annual fee payable by a company is due shall be determined as follows:

- (a) if the company was incorporated or continued, or in the case of a consolidated company, the articles of consolidation were registered, between 1<sup>st</sup> January and 30<sup>th</sup> June in any year, the annual fee shall be due on the 31<sup>st</sup> May of each year, commencing in the year following its incorporation, continuation or consolidation;
- (b) if the company was incorporated or continued, or in the case of a consolidated company, the articles of consolidation were registered, between 1<sup>st</sup> July and 31<sup>st</sup> December in any year, the annual fee shall be due on the 30<sup>th</sup> November of each year, commencing in the year following its incorporation, continuation or consolidation.

Meaning of annual fee.

**6.** For the purposes of paragraph 5, the annual fee payable by a company is the annual fee specified in Part I of this Schedule or in paragraph 31 or 48 of Schedule 2, as the case may be.

Application of paragraph 5 to former Act companies.

**7.** Paragraph 5 applies to a former Act company re-registered under Schedule 2, whether on application under Part II or automatically under Part III of that Schedule, with the following modifications:

- (a) the relevant date for determining whether the company falls within paragraph 5(a) or 5(b), is
  - (i) in the case of an IBC, the date of its incorporation, continuation or consolidation under the International Business Companies Act, and
  - (ii) in the case of a CapCo, the date of its incorporation under the Companies Act; and
- (b) subject to paragraph 8, the liability of a former Act company that is re-registered under Schedule 2 to pay the annual fee due under this



Act shall commence in the year of its re-registration.

**8.** A former Act company re-registered on application under Part II of Schedule 2 shall not be liable to pay an annual fee in the year of its re-registration if the annual licence fee payable by the company under the applicable former Act for that year became due on or before the date of its re-registration. Exception to paragraph 7.

**9.** For the purposes of paragraphs 10 to 12 Interpretation for paragraphs 10 to 12.

(a) a company is a bearer share company if

- (i) it is of a type specified in section 5(a), (c) or (e), and
- (ii) the company is not prohibited by its memorandum from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares;

(b) a company is a “grandfathered bearer share company” if it is a former Act company that meets all of the following conditions:

- (i) as at 31 December 2004, it was on the Register of International Business Companies maintained under the International Business Companies Act; Cap. 291
- (ii) its memorandum, as at 31 December 2004, did not prohibit it from issuing bearer shares,
- (iii) it is a company that was re-registered automatically under Part III of Schedule 2;
- (iv) a notice to disapply Part IV of Schedule 2 has not been registered with respect to the company, and
- (v) its memorandum has not, at any time since 31 December 2004, been amended to prohibit it from issuing bearer shares, converting registered shares to bearer shares or exchanging registered shares for bearer shares;

(c) the following fees are specified fees:

- (i) the fee for the incorporation of a company under section 7(1),
- (ii) the fee for the registration of articles of consolidation under section 171(3),

- (iii) the fee for the continuation of the company under section 182(1), and
- (iv) the annual fee payable under Part I of this Schedule or under paragraph 31 or 48 of Schedule 2.

Increased fee payable by bearer share company.

**10.** (1) Subject to paragraphs 11 and 12, any specified fee payable by, or in respect of a company that, on the date that the applicable fee is due, is a bearer share company is increased as follows:

- (a) if the company is authorised to issue no more than 50,000 shares, by \$750.00; or
- (b) if the company is authorised to issue more than 50,000 shares, by \$250.00.

(2) For the avoidance of doubt, this paragraph applies to the annual fee payable by an IBC that is re-registered automatically under Part III of Schedule 2 and that has not elected to disapply Part IV of that Schedule, but with the modification specified in paragraph 30(2) of that Schedule.

Reduced annual fee payable where all bearer shares held by qualifying custodian.

**11.** The annual fee payable by a bearer share company is increased, in the case of a company specified in paragraph 10(1)(a) by \$450.00 and in the case of a company specified in paragraph 10(1)(b) by \$150.00, in place of the figures of \$750.00 and \$250.00 specified in those paragraphs, if

- (a) every bearer share in the company in issue on the date that the annual fee is due (the due date) is held by an authorised custodian, the registered office and head office of which are situated in the Virgin Islands (a qualifying custodian); and
- (b) every bearer share in the company that has been in issue at any time during the period of twelve months prior to the due date has at all times during that period been held by a qualifying custodian.

Grandfathered bearer share companies.

**12.** (1) This paragraph applies to a company that, on the date that the applicable fee is due, is a grandfathered bearer share company, in place of paragraphs 10 and 11, for each of the years 2007 to 2010.

(2) The annual fee payable by a grandfathered bearer share company shall not be subject to any increase in the year 2007.

(3) Subject to subparagraph (4), the annual fee payable by a grandfathered bearer share company shall be increased, in the case of a company specified in

paragraph 10(1)(a) by \$250.00 and in the case of a company specified in paragraph 10(1)(b) by \$150.00 for each of the years 2008 to 2010.

(4) The annual fee payable by a grandfathered bearer share company shall be increased for each of the years 2008 to 2010, in the case of a company specified in paragraph 10(1)(a) by \$150.00 and in the case of a company specified in paragraph 10(1)(b) by \$100.00, in place of the figures of \$250.00 and \$150.00 specified in subparagraph (3), if

- (a) every bearer share in the company in issue on the date that the annual fee is due for that year (the due date) is held by an authorised custodian, the registered office and head office of which are situated in the Virgin Islands (a qualifying custodian); and
- (b) every bearer share in the company that has been in issue at any time during the period of twelve months prior to the due date has at all times during that period been held by a qualifying custodian.

**13.** If by reason of an amendment of its memorandum, its merger with another company or an arrangement, the memorandum of a company no longer prohibits the company from issuing bearer shares, converting registered shares to bearer shares or exchanging registered shares for bearer shares, in circumstances where the memorandum contained such a prohibition prior to the amendment, merger or arrangement, it shall be liable to pay a fee equal to the difference between

Memorandum ceases to prohibit issue of bearer shares etc.

- (a) the fee that it would have paid on its incorporation or continuation had it been so authorized; and
- (b) the fee that it actually paid.

**14.** Where a company is incorporated as a restricted purposes company, the incorporation fee specified in the table in Part I of this Schedule in respect of section 8(1) is payable instead of, and not in addition to, the incorporation fee specified in the table in respect of section 7(1).

Fee payable by restricted purposes company.

**15.** Where an Insolvency Act liquidator is appointed in respect of a company, the company is not liable for any fees incurred under this Schedule after the date of the liquidator's appointment.

Insolvency Act liquidator appointed.

**16.** For the purposes of this Schedule, a company that is authorised to issue an unlimited number of shares shall be regarded as a company that is authorised to issue more than 50,000 shares.”.

Company authorised to issue unlimited number of shares.

**SCHEDULE 2**

**REPEAL AND REPLACEMENT OF SCHEDULE 2 OF THE ACT**

**“SCHEDULE 2  
[Section 248]**

**TRANSITIONAL PROVISIONS**

**PART I  
PRELIMINARY**

Interpretation.

**1.** In this Schedule,

“bearer share company” and “grandfathered bearer share company” have the meaning specified in paragraph 9 of Schedule 1;

“CapCo” means a former Act company that was incorporated under the Companies Act and that has not been continued under the International Business Companies Act; and

“IBC” means a former Act company that was incorporated, continued or registered as a consolidated company under the International Business Companies Act.

Cap. 285  
Cap. 291

**PART II  
APPLICATION TO RE-REGISTER FORMER ACT COMPANIES**

Application by former Act company to re-register under this Act.

**2.** (1) A former Act company that, at the date of the application, is on the appropriate Register maintained under the Companies Act or the International Business Companies Act may, at any time during the relevant period, apply to the Registrar to re-register as a company under this Act.

(2) For the purposes of subparagraph (1), “relevant period” means

(a) in the case of a CapCo, the period from 1 January 2005 to 16.00 hours on 30 November 2007; and

(b) in the case of an IBC, the period from 1 January 2005 to 16.00 hours on 30 November 2006.

(3) An application for the re-registration of a former Act company as a company under this Act shall be filed by the registered agent and shall

- (a) be, and contain the information specified, in the approved form; and
  - (b) be accompanied by
    - (i) a memorandum that, subject to subparagraphs (4), (5), (6), and (7), complies with section 9 and by articles complying with this Act (“the new memorandum and articles”),
    - (ii) a document in the approved form signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration,
    - (iii) in the case of an application made on or after 1 December 2006, where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the application
      - (A) all the bearer shares in the company in issue on the date of the application have been delivered to, and are in the custody of, a custodian, or
      - (B) there are no bearer shares of the company in issue,
    - (v) such other documents as may be prescribed.
- (4) The new memorandum and articles shall be signed by the registered agent as the applicant to re-register.
- (5) In subparagraphs (3) and (4), “registered agent” means
- (a) in the case of a CapCo, the person named in the new memorandum as the first registered agent of the company, who shall be a person qualified to act as registered agent under section 91(3); and
  - (b) in the case of an IBC, the registered agent of the company at the date of the application.
- (6) In addition to the matters required under section 9, the new memorandum shall state
- (a) the date that the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or registered as a consolidated company under the International Business Companies Act;

Cap. 285  
Cap. 291

whether, immediately prior to its re-registration under this Act, it was governed by the Companies Act or by the International Business Companies Act.

(7) The new memorandum shall state

- (a) in the case of a CapCo, the name of the first registered agent of the company and the address of the registered office of the company at the time of the application to re-register under this paragraph; and
- (b) in the case of an IBC, the name of the registered agent, and the address of the registered office, at the time of the application to re-register under this paragraph.

(8) Subject to subparagraph (9), an application to re-register under this paragraph shall be authorised, and the new memorandum and articles shall be approved, by

- (a) in the case of a CapCo, a resolution of the members of the company; and
- (b) in the case of an IBC, a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors.

(9) The directors of an IBC shall not have any power to approve the new memorandum and articles to the extent that they amend the memorandum and articles of the company in effect at the date of the application (“the original memorandum and articles”), unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.

Regulations may prescribe model articles.

**3.** The Regulations may prescribe one or more model articles which may be adopted by a CapCo making application to re-register under this Part.

Circumstances where adoption of new memorandum by CapCo not reduction capital  
Cap. 285

**4.** (1) Where the members of a CapCo that is limited by shares, or that has a capital divided into shares, adopt a new memorandum compliant with section 9, the fact that the new memorandum does not contain a statement of the capital of the company does not, of itself, constitute a reduction of capital for which the approval of the Court is required under the Companies Act, provided that

- (a) the resolution to adopt the new memorandum is passed by the members unanimously;

- (b) the number of shares in issue is not reduced;
- (c) the maximum number of shares that the company is authorised to issue under the new memorandum is equal to or greater than the number of shares into which the capital is divided under the Companies Act; and
- (d) the par value of the shares remains the same.

(2) For the purposes of subparagraph (1)(c), “capital” has the same meaning as in section 20 of the Companies Act.

**5.** (1) If he is satisfied that the requirements of this Act in respect of re-registration have been complied with, subject to subparagraph (2), the Registrar shall, upon receipt of an application and the other documents specified in paragraph 2

Re-registration  
by the Registrar.

- (a) register the documents;
- (b) allot a unique number to the company; and
- (c) issue a certificate of re-registration to the company in the approved form.

(2) The Registrar may refuse to re-register a former Act company under this Part if the company is in default of any obligation under the former Act under which it is incorporated, registered or continued, including an obligation to pay any fee or penalty due on or before the date of its re-registration.

(3) A certificate of re-registration is conclusive evidence that

- (a) all the requirements of this Schedule as to re-registration have been complied with; and
- (b) the company is re-registered under this Act on the date specified in the certificate of re-registration.

(4) The unique number allotted to a company under subparagraph (1) may be the number previously allocated by the Registrar to the company as a former Act company.

(5) Except as otherwise provided in this Act, a company that is re-registered under this Part shall be subject to this Act as if it was a company incorporated under this Act and the transitional provisions specified in Part IV or in Division 1 of Part VI of this Schedule do not apply to the company.

(6) For the avoidance of doubt, subject to subparagraph (7), a company that is re-registered under this Part is subject to Division 5 of Part III of this Act.

(7) In the case of a bearer share company, in respect of which the application to re-register the company under this Part was filed on or before 30 November 2006, every bearer share in the company shall, on or before 31 December 2006, be delivered to a custodian who has agreed to hold the share and section 70(1) shall not apply with respect to bearer shares in the company during the period commencing on the date of its re-registration and ending on 31 December 2006.

(8) A company to which subparagraph (7) applies shall, on or before 14 January 2007, file a declaration that, as at 1 January 2007

- (a) all the bearer shares in the company in issue on 31 December 2006 have been delivered to, and are in the custody of, a custodian; or
- (b) there were no bearer shares in the company in issue on 31 December 2006.

### **PART III**

#### **AUTOMATIC RE-REGISTRATION OF FORMER ACT COMPANIES**

Former Act  
companies  
automatically re-  
registered under  
this Act.  
Cap. 291

6. (1) Subject to the provisions of this paragraph
- (a) every IBC that, at midnight on 31 December 2006, is on the Register of International Business Companies maintained under the International Business Companies Act shall be deemed to be re-registered under this Act with effect from the 1 January 2007; and
  - (b) every CapCo that, at midnight on 31 December 2007, is on the Register of Companies maintained under the Companies Act shall be deemed to be re-registered under this Act with effect from the 1 January 2008.

Cap. 285

- (2) For the purposes of subparagraphs (3) and (4), “relevant date” means
- (a) in the case of an IBC, 31 December 2006; and
  - (b) in the case of a CapCo, 31 December 2007.

(3) For the avoidance of doubt, if the Registrar does not determine an application for the re-registration of a former Act company on or before the relevant date applicable to that company, the company is deemed to be re-registered under this Act automatically in accordance with subparagraph (1).



(4) No certificate of re-registration shall be issued by the Registrar under paragraph 5 after the relevant date.

(5) Where a company is automatically re-registered under this paragraph, the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(6) Part IV of this Schedule applies to an IBC that is automatically re-registered under this Part.

(7) Division 1 of Part VI of this Schedule applies to a CapCo that is automatically re-registered under this Part.

(8) The unique number allotted to a company under subparagraph (5) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as a former Act company.

7. (1) An IBC that is re-registered automatically under this Part is re-registered as a company limited by shares. IBC re-registered as company limited by shares.

(2) The company number allotted to an IBC that is re-registered automatically shall, unless the Registrar is of the opinion that there are good reasons to the contrary, be the number under which the company was registered under the International Business Companies Act immediately prior to its re-registration under this Act. Cap. 291

8. The following apply to a CapCo that is re-registered automatically under this Part: Type of company on re-registration of CapCo.

- (a) if at midnight on 31 December 2007, the company is a company limited by shares, it shall be re-registered under this Act as a company limited by shares;
- (b) if at midnight on 31 December 2007, the company is a company limited by guarantee, not having a capital divided into shares, it shall be re-registered under this Act as a company limited by guarantee that is not authorised to issue shares;
- (c) if at midnight on 31 December 2007, the company is a company limited by guarantee, having a capital divided into shares, it shall be re-registered under this Act as a company limited by guarantee that is authorised to issue shares;
- (d) if at midnight on 31 December 2007, the company is an unlimited company, having a capital divided into shares, it shall be re-registered under this Act as an unlimited company that is authorised

to issue shares.

Certificate of registration where former Act company re-registered automatically.

**9.** (1) Where a former Act company is automatically re-registered under this Part, the Registrar shall not be required to issue a certificate of re-registration to the company unless it applies for a certificate and pays a fee of \$25.00.

(2) A certificate of re-registration issued under subparagraph (1) shall state

- (a) the former Act under which the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or continued or registered as a consolidated company under the International Business Companies Act and the date of its incorporation, continuation or consolidation; and
- (b) that the former Act company was automatically re-registered under this Act and the date of its re-registration.

**PART IV**  
**TRANSITIONAL PROVISIONS APPLYING TO IBCS**  
**THAT ARE AUTOMATICALLY RE-REGISTERED UNDER PART III**

**Division 1 - Preliminary**

Scope of this Part.

**10.** This Part applies to an IBC that is automatically re-registered under Part III of this Schedule.

Interpretation for this Part.

**11.** In this Part, unless the context otherwise requires,

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

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

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

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

“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.

**12.** (1) A company to which this Part applies may elect to disapply this Part by filing Company may disapply this Part.

- (a) a memorandum that, subject to subparagraphs (2), (3) and (4), complies with section 9 and articles that comply with this Act (“the new memorandum and articles”);
- (b) a notice in, and containing the information specified in, the approved form;
- (c) where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the notice
  - (i) all the bearer shares in the company in issue have been delivered to, and are in the custody of, a custodian, or
  - (ii) there were no bearer shares in the company in issue; and
- (d) such other documents as may be prescribed.

(2) The new memorandum and articles shall be signed by the registered agent of the company.

(3) In addition to the matters required under section 9, the new memorandum shall state

- (a) the date that the company was first incorporated or, if appropriate, the date with effect from which it was continued or registered as a consolidated company under the International Business Companies Act; Cap. 291
- (b) that, immediately prior to its automatic re-registration under this Act, it was governed by the International Business Companies Act .

(4) The new memorandum shall state the name of the registered agent, and the address of the registered office, at the date of the notice.

(5) Subject to subparagraph (6), a notice of election to disapply this Part shall be authorised, and the new memorandum and articles shall be approved, by a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors.

(6) The directors shall not have any power to approve the new memorandum and articles to the extent that they amend the memorandum and articles of the company in effect at the date of the notice (“the original memorandum and articles”), unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.

(7) An election under paragraph (1) takes effect from the date that the notice is registered by the Registrar and from that date

- (a) the company shall be treated as if it was a company that had been re-registered on application under Part II;
- (b) this Part shall cease to apply to the company; and
- (c) for the avoidance of doubt, the company shall be subject to Division 5 of Part III of this Act.

(8) On the registration of a notice of election to disapply this Part, the Registrar shall issue a certificate in the approved form.

## **Division 2 - Memorandum**

Memorandum.

**13.** (1) In place of the requirements specified in section 9, the memorandum of a company to which this Part applies must include the following:

- (a) the name of the company;
- (b) the address within the Virgin Islands of the registered office of the company;
- (c) the name and address within the Virgin Islands 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) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as bearer shares unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or bearer shares and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or bearer shares as they may determine by resolution of directors;
- (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 subparagraph (1)(d), if the memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the memorandum.

**14.** A company to which this Part applies that amends its memorandum to prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, shall file, together with the notice of amendment, a declaration that the company has no bearer shares in issue on the date of the filing of the notice.

Amendment of memorandum to prohibit issue etc. of bearer shares.

Memorandum not required to be amended on change in registered office or registered agent.

**15.** (1) For the avoidance of doubt, section 92 applies to the change, by a company to which this Part applies, of the location of its registered office or of its registered agent.

(2) Unless the memorandum or articles of the company expressly provide otherwise, a company to which this Part applies is not required to amend its memorandum to reflect a change in the location of its registered office or of its registered agent.

### **Division 3 - Capital, redemptions and dividends**

Scope of this Division.

**16.** Paragraphs 17 to 29 apply to a company to which this Part applies in place of section 40A, section 51 and sections 56 to 65 of this Act.

Shares to be fully paid.

**17.** No share in a company 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 save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in paragraph 18.

Forfeiture of shares.

**18.** (1) The memorandum or articles, or an agreement for the subscription of shares, of a company may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the memorandum or articles, or in an agreement for the subscription of shares of a company providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

(3) The written notice referred to in subparagraph (2) shall name a further date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a notice has been issued under this paragraph and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subparagraph (4) and that member shall be discharged from any further obligation to the company.

**19.** (1) Subject to the memorandum or articles, shares in a company may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

Amount of consideration for shares.

(2) A share issued by a company 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.

**20.** (1) The authorised capital, if any, of a company may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

Authorised capital in several currencies.

(2) The Commission may issue guidelines with respect to the calculation of fees payable by companies with an authorised capital stated in a currency other than United States dollars.

**21.** (1) Upon the issue by a company 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.

Capital and surplus accounts.

(2) Subject to the memorandum or articles, upon the issue by a company 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 of a treasury share, the consideration in respect of the share is added to surplus.

**22.** (1) A share issued as a dividend by a company 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.

Dividend of shares.

(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 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 proportionally smaller par value does not constitute a dividend of shares.

Increase or  
reduction of  
share capital.

**23.** (1) Subject to the memorandum or articles, a company may amend its memorandum to increase or reduce its authorised capital, and in connection therewith, the company may

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

(2) Where a company reduces its authorised capital under subparagraph (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.

(3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorised capital.

Division and  
combination.

**24.** (1) A company 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 divided or combined under subparagraph (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

Acquisition of  
own shares.

**25.** (1) Subject to the memorandum or articles, a company may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.



(2) Subject to subparagraph (1), a company may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of

- (a) the provisions of the memorandum or articles of the company;
- (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or
- (c) the subscription agreement for the issue of the shares.

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

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

(4) A determination by the directors under subparagraph (3) is not required where shares are purchased, redeemed or otherwise acquired

- (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) by virtue of a transfer of capital pursuant to paragraph 27(1)(b);
- (c) by virtue of the provisions of section 179; and
- (d) pursuant to an order of the court.

(5) Subject to 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 by virtue of a reduction in capital, 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.

(6) A company may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of

- (a) its memorandum or articles; or
- (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.

Treasury shares disabled.

**26.** Where shares in a company

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

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

Increase or reduction of capital.

**27.** (1) Subject to the memorandum or articles and subject to subparagraphs (2) and (3), the capital of a company may, by a resolution of members or by resolution of directors, be

- (a) increased by transferring an amount out of the surplus of the company to capital; or
- (b) reduced by transferring an amount out of capital of the company to surplus.

(2) No reduction of capital shall be effected under subparagraph (1) that reduces the capital of the company to an amount that is less than the sum of

- (a) the aggregate par value of
  - (i) all outstanding shares with par value, and
  - (ii) all shares with par value held by the company as treasury shares; and
- (b) the aggregate of the amounts designated as capital of
  - (i) all outstanding shares without par value, and

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

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

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realisable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

**28.** (1) Subject to the memorandum or articles, a company may, by a resolution of directors, declare and pay dividends in money, shares or other property. Dividends.

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

(3) No 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 realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

**29.** Subject to the memorandum or articles, a company may, by a resolution of directors, include in the computation of surplus for any purpose under this Part the net unrealised appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved. Appreciation of assets.

#### Division 4 - Fees

Scope of this Division.

**30.** (1) The fees specified in paragraphs 31 and 32 are payable by a company to which this Part applies in place of the equivalent fees specified in Schedule 1.

(2) Except as specified in paragraphs 31 and 32, Schedule 1 applies to a company to which this Part applies with the following modifications:

- (a) any reference in the Schedule to the phrase “is authorised to issue no more than 50,000 shares” shall be deemed to be a reference to the phrase “has an authorised capital of no more than \$50,000.00”; and
- (b) any reference in the Schedule to the phrase “is authorised to issue more than 50,000 shares” shall be deemed to be a reference to the phrase “has an authorised capital of more than \$50,000.00”.

Annual fee payable.

**31.** Subject to Parts II and III of Schedule 1, the annual fee payable by a company to which this Part applies is as follows:

- (a) \$350.00 if, on the date that the annual fee is due,
  - (i) the authorised capital of the company does not exceed \$50,000.00 and some or all of the shares in the company have a par value, or
  - (ii) the company has no authorised capital and all its shares have no par value; or
- (b) \$1,100.00 if, on the date that the annual fee is due the authorised capital of the company exceeds \$50,000.00.

Notice of increase or decrease in authorised capital.

**32.** There shall be paid to the Registrar upon the filing of any notice of an increase or a decrease in authorised capital pursuant to paragraph 27 the following fees:

- (a) \$750.00 in the case of an increase of authorised capital from \$50,000.00 or less to more than \$50,000.00; and
- (b) in all other cases, \$25.00.

Insolvency Act liquidator appointed.

**33.** Where an Insolvency Act liquidator is appointed in respect of a company to which this Part applies, the company is not liable for the annual fee payable under paragraph 31.

**34.** (1) In this Division,

Interpretation for  
and scope of this  
Division.

“effective date means 1 January, 2005;

“existing bearer share” means a share in a bearer share company

- (a) that was issued as or converted to a bearer share prior to the effective date and that remains a bearer share in the company on the effective date, and
- (b) that has not, prior to the re-registration of the company under this Part, ceased to be an existing share by virtue of section 37E(5) of the International Business Companies Act;

Cap. 291

“transition date” means 31 December, 2010.

(2) Division 5 of Part III of this Act is modified with respect to any existing shares in a grandfathered bearer share company to the extent specified in this Division.

**35.** (1) Every existing bearer share of a grandfathered bearer share company shall, on or before the transition date

Existing bearer  
shares.

- (a) be deposited with a custodian who has agreed to hold the share; or
- (b) be converted to, or exchanged for, a registered share.

(2) Subparagraph (1) does not apply to a bearer share that, before the transition date

- (a) is cancelled; or
- (b) is redeemed, purchased or otherwise acquired by the company as a treasury share.

(3) An existing bearer share in a grandfathered bearer share company is deemed not to have been deposited with a custodian for the purposes of subparagraph (1) until the registered agent of the company has received

- (a) in the case of a bearer share deposited with an authorised custodian, notification of the deposit from the authorised custodian in accordance with section 72(1); or
- (b) in the case of a bearer share deposited with a recognised custodian, the proof of the deposit of the share and the notice required to be sent by section 71(3).

(4) The Court may, on the application of the company or of a person interested in a bearer share, extend the period specified in subparagraph (1) by such further period or periods not exceeding one year in total as it considers fit.

(5) On an existing bearer share being deposited with a custodian in accordance with subparagraphs (1)(a) and (3), it shall for all purposes of this Division cease to be regarded as an existing bearer share and shall thereafter be treated as if it had been issued after the effective date.

(6) Section 70(1) shall not have effect with respect to an existing bearer share until after the transition date.

Redemption of existing bearer shares.

**36.** (1) Where an existing bearer share in a grandfathered bearer share company is not deposited with a custodian who has agreed to hold the share on or before the transition date, the company may, notwithstanding sections 59 to 62 or any provision in the memorandum or articles, in any shareholders' agreement or in any other agreement, redeem the share.

(2) Subject to subparagraph (3), sections 176(3) and 179 apply to the redemption of bearer shares under subparagraph (1).

(3) Where a grandfathered bearer share company is unable, on making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share

(a) it is not required to give the member notice under section 176(3); and

(b) the company shall hold the proceeds of redemption on trust for the owner of the bearer share.

Application for appointment of liquidator.

**37.** Where, after the transition date, a company to which this Part applies has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Division, the Commission may apply to the Court for the appointment of a liquidator of the company under the Insolvency Act.

## PART V

### TRANSITIONAL PROVISIONS APPLYING TO IBCS THAT ARE RE-REGISTERED UNDER PART II OR PART III

- 38.** (1) This Part applies to a company that is re-registered, on application, under Part II or automatically under Part III. Registration of charges created prior to commencement date.
- (2) Application may be made to register a charge created prior to the commencement date by a company to which this Part applies.
- (3) Section 163 applies to an application made under subparagraph (1) as if the charge was a relevant charge.
- (4) Where a charge is registered in accordance with this paragraph
- (a) the charge shall be entered in the company's register of charges kept under section 162;
  - (b) sections 164, 165, 166 and 168 apply with respect to the charge as if it was a relevant charge;
  - (c) section 167 does not apply with respect to the charge, notwithstanding that it is a charge created prior to the commencement date.

## PART VI

### TRANSITIONAL PROVISIONS APPLYING TO CAPCOS RE-REGISTERED UNDER THIS SCHEDULE

#### Division 1 – CapCos automatically re-registered under Part III

**39.** This Division applies to a CapCo that is automatically re-registered under Part III of this Schedule whether, immediately prior to its re-registration, the company was a private company or a public company. Scope of this Division.

- 40.** (1) A company to which this Division applies may elect to disapply this Division, other than paragraph 44, by filing Company may disapply this Division.
- (a) a memorandum that, subject to subparagraphs (2), (3) and (4), complies with section 9 and articles that comply with this Act (“the new memorandum and articles”);

- (b) a notice in, and containing the information specified in, the approved form;
- (c) where the new memorandum does not prohibit the company from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares, a declaration that, as at the date of the notice
  - (i) all the bearer shares in the company in issue have been delivered to a custodian,
  - (ii) there are no bearer shares in the company in issue;
- (d) a certified copy of the resolution of the members of the company authorising the application, and
- (e) such other documents as may be prescribed.

(2) The new memorandum and articles shall be signed by the registered agent of the company.

(3) In addition to the matters required under section 9, the new memorandum shall state

- (a) the date that the company was first incorporated under the Companies Act; and
- (b) that, immediately prior to its automatic re-registration under this Act, it was governed by the Companies Act .

(4) The new memorandum shall state the name of the registered agent, and the address of the registered office, at the date of the notice.

(5) Paragraph 4 of this Schedule applies where a company adopts a new memorandum for the purposes of filing an election to disapply this Division under this paragraph.

(6) A notice of election to disapply this Division shall be authorised, and the new memorandum and articles shall be approved, by a resolution of the members of the company.

(7) An election under paragraph (1) takes effect from the date that the notice is registered by the Registrar and from that date

- (a) the company shall be treated as if it was a company that had been re-registered on application under Part II.



- (b) this Division shall cease to apply to the company; and
- (c) for the avoidance of doubt, the company shall be subject to Division 5 of Part III of this Act.

(8) On the registration of a notice of election to disapply this Division, the Registrar shall issue a certificate in the approved form.

**41.** (1) In place of the requirements specified in section 9, the memorandum of a company to which this Division applies must include the matters specified in section 7, 8 or 9 of the Companies Act, as appropriate for the company's type immediately before its re-registration under this Act. Memorandum and articles.

(2) For the avoidance of doubt, the terms "private company" and "public company" have no meaning in this Act and any reference to the terms in the memorandum or articles of a company to which this Division applies shall have no effect.

(3) The articles of a company to which this Division applies must include the matters specified in section 39 of the Companies Act, as appropriate for the company's type immediately before its re-registration under this Act.

(4) Where the articles of a company to which this Division applies incorporate all or any of the provisions contained in Table A in the First Schedule to the Companies Act, Table A continues to have effect with respect to that company, notwithstanding the repeal of the Companies Act.

**42.** Notwithstanding the repeal of the Companies Act, sections 15 to 19 of the Companies Act continue to apply to a company to which this Division applies. Companies having directors with unlimited liability.  
Provisions in former Act relating to reduction of capital to continue to have effect.

**43.** (1) Notwithstanding the repeal of the Companies Act, sections 20 and 21, sections 23 to 36A and section 38 of the Companies Act continue to apply to a company to which this Division applies in place of sections 56 to 65 with the following modifications: Provisions in former Act relating to reduction of capital to continue to have effect.

- (a) in section 24, the words "winding up of the company" are deleted and the words "liquidation of the company under the Insolvency Act, 2003" are substituted;
- (b) in section 25(b), the words " , in the same manner as if the company were being wound up by the Court," are deleted;
- (c) in section 26(3), the words "under his hand" are deleted;
- (d) in section 28

- (i) the words “within the meaning of section 116” are deleted and the words “on demand being made against it, are substituted”,
  - (ii) the words “the company had commenced to be wound up” are deleted and the words “a liquidator had been appointed with respect to the company under the Insolvency Act, 2003” are substituted, and
  - (iii) the words “the company being wound up” are deleted and the words “a liquidator being appointed with respect to the company” are substituted;
- (e) section 31(b) is deleted; and
  - (f) in section 36, the words from “specify in the annual lists of members” to “the company shall also” are deleted.

(2) The power to issue redeemable shares conferred by section 36(1)(a) is, with respect to a company to which this Division applies, subject to the provisions of section 36A of the Companies Act.

Shares.

**44.** Every share in a company to which this Division applies, which has a capital divided into shares, shall be distinguished by its appropriate number.

Notice of increase in capital and reserve capital.

**45.** (1) Notwithstanding the repeal of the Companies Act, section 57 of that Act continues to apply to a company to which this Division applies.

(2) Notwithstanding the repeal of section 61 of the Companies Act, any resolution passed under that section prior to the automatic re-registration of the company under Part III shall have effect as if that section had not been repealed.

Registered office and registered agent.

**46.** (1) On the automatic re-registration of a company to which this Division applies, its registered office shall be the registered office of the company under the Companies Act immediately prior to its re-registration.

(2) A company to which this Division applies shall, within two months of its re-registration under Part III

- (a) appoint a person qualified to act as registered agent under section 91(3) as its registered agent; and
- (b) file a notice of appointment of its registered agent in the approved form.

**47.** (1) A company to which this Division applies shall hold a general meeting at least once each year. General meeting and special resolution.

(2) For the purposes of this Division and for the memorandum and articles of a company to which this Division applies

(a) “special resolution” has the meaning specified in section 90 of the Companies Act; and

(b) sections 90 and 93 have effect with respect to special resolutions passed or to be passed by a company to which this Division applies.”.

**48.** (1) Subject to Parts II and III of Schedule 1, the annual fee payable by a CapCo that is automatically re-registered under Part III of this Schedule is as follows: Annual fees payable by re-registered CapCo.

(a) \$350.00 if, on the date that the annual fee is due, the capital of the company does not exceed \$50,000.00;

(b) \$1,100.00 if, on the date that the annual fee is due the capital of the company exceeds \$50,000.00.

(2) For the purposes of subparagraph (1), “capital” means the capital stated in the company’s memorandum or articles of association.

## **Division 2 – CapCos re-registered under Part II or III**

**49.** This Division applies to a CapCo that is re-registered under this Schedule, whether on application made under Part II or automatically under Part III. Scope of this Division.

**50.** (1) A licence granted under section 13 of the Companies Act directing the registration of a company with limited liability without the addition of the word “Limited” to its name which was in force with respect to a CapCo immediately prior to the re-registration of the company under Part II or Part III of this Schedule, continues in force notwithstanding the repeal of the Companies Act as if an authorisation had been granted with respect to the company under section 17A(1). Dispensation for required part of company name.

(2) Section 17A(2) to (7) apply to a company to which subparagraph (1) applies.

Provisions of Companies Act continuing to have effect.

**51.** (1) Notwithstanding the repeal of the Companies Act, the following provisions continue to have effect with respect to a CapCo re-registered under this Act, whether re-registered under Part II or Part III of this Schedule:

- (a) section 85 continues to have effect with respect to a promissory note or bill of exchange made, accepted or endorsed prior to the re-registration of the company under this Schedule;
- (b) the proviso to section 202 continues to have effect with respect to a company that is struck off the Register of Companies maintained under the Companies Act and dissolved on or before the transition end date;
- (c) sections 203A, 203B and 203C continue to have effect with respect to all property and rights that are subject to those sections with respect to a company that is dissolved under the Companies Act prior to the re-registration date.

## **PART VII**

### **VOLUNTARY LIQUIDATION AND STRIKE OFF**

Interpretation for this part.

**52.** For the purposes of this Part,

“CapCo Register” means the Register of Companies maintained under the Companies Act;

“IBC Register” means the Register of International Business Companies maintained under the International Business Companies Act; and

“re-registration date” means,

- (a) in the case of a CapCo, 1<sup>st</sup> January 2008, and
- (b) in the case of an IBC, 1<sup>st</sup> January 2007.

CapCo may enter into voluntary liquidation.

**53.** (1) A CapCo that has not been re-registered under Part II or Part III of this Schedule may be liquidated voluntarily if

- (a) it has no liabilities; or
- (b) it is able to pay its debts as they fall due.

(2) Where a CapCo may be liquidated voluntarily under subparagraph (1), sections 198 to 211 of this Act apply to, and with respect to, the company and its

liquidation as if the company was a company incorporated under that Act, with the following modifications:

- (a) in section 199, subsection (1)(a) and subsection (2) are deleted;
- (b) in section 200(3), the words “directors or” are deleted;
- (c) in section 203(1), the words “the directors or” are deleted;
- (d) in section 203(3), the words “the directors or the members, as the case may be,” are deleted and the words “the members” are substituted; and
- (e) where the voluntary liquidator files a statement under section 208(1), before the re-registration date, the words “Register of Companies” in subsection (1)(a) and subsection (3) are deleted, and the words “CapCo Register” are substituted.

**54.** Where an unregistered company is, on 31<sup>st</sup> December 2007, being wound up under Part VIII of the Companies Act, that Part and Part IV of the Companies Act continue to apply in relation to any such winding up. Winding up of unregistered companies.

**55.** Part IX of the International Business Companies Act shall continue to apply to the winding up and dissolution of an IBC after the repeal of that Act if, prior to the re-registration date Winding up of IBC commenced before re-registration date.

- (a) articles of dissolution are registered by the Registrar pursuant to section 94(4) of the International Business Companies Act; and
- (b) either the company has not been dissolved under section 94(6) of that Act or the articles of dissolution have not been rescinded under section 95 of that Act.

**56.** (1) A CapCo that is struck off the CapCo Register under section 240 of the Companies Act and that remains struck off continuously for a period of ten years following the date of its strike off, is deemed to be dissolved with effect from the later of Dissolution of former Act companies.

- (a) the re-registration date; or
- (b) the last day of that period.

(2) Section 240(1) of the Companies Act has effect for the year 2007 subject to the modification that “31<sup>st</sup> December” is deleted and “28<sup>th</sup> December is substituted”.

(3) An IBC that is struck off the IBC register under section 99 of the International Business Companies Act, prior to the re-registration date, but that is not deemed to be dissolved prior to the re-registration date, if it remains struck off continuously for a period of ten years, shall be deemed to be dissolved with effect from the last day of that period.

(4) Where this paragraph applies to a CapCo or an IBC, it applies in place of section 216.

Order declaring  
dissolution of  
former Act  
company void.

**57.** (1) Application may be made to the Court for an order declaring the dissolution of a CapCo or an IBC to which subparagraph (2) applies to be void.

(2) This paragraph applies, in place of section 218, where

(a) in the case of a CapCo

(i) the company was struck off the CapCo Register and dissolved under section 202 of the Companies Act prior to the re-registration date, or

(ii) the company is deemed to be dissolved under paragraph 54;  
or

(b) in the case of an IBC

(i) the company was dissolved under the provisions of the International Business Companies Act prior to the re-registration date, or

(ii) is deemed to be dissolved under paragraph 54.

(3) An application under subparagraph (1)

(a) may be made by the company or a creditor, member or liquidator of the company;

(b) shall be made within ten years of the date that the company was dissolved; and

(c) may be made after the applicable re-registration date, or where the company has been struck off and dissolved prior to the applicable re-registration date, prior to that date.

(4) On an application under subparagraph (1), the Court may declare the dissolution of the company void, subject to such conditions as it considers just.

- (5) Where the Court makes an order under subparagraph (4)
  - (a) the company is deemed never to have been struck off the CapCo Register or the IBC Register, as the case may be, or to have been dissolved; and
  - (b) where the order is made on or after the applicable re-registration date, the company is deemed to have been automatically re-registered under this Act in accordance with Part III on the re-registration date.

(6) Where the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of restoration and re-registration to the company in the approved form and the restoration has effect from the date of the Court order or such other date as may be specified in the order.

**58.** (1) Application may be made to the Registrar, prior to or after the applicable re-registration date, to restore and re-register Restoration of CapCo or IBC to register.

- (a) a CapCo that was struck off the CapCo Register under section 240 of the Companies Act prior to the re-registration date, but is not deemed dissolved under paragraph 54; or
- (b) an IBC that was struck off the IBC Register prior to the re-registration date, but that is not dissolved prior to the re-registration date or deemed to be dissolved under paragraph 54.

(2) An application under subparagraph (1) may be made by the company or a creditor, member or liquidator of the company.

(3) Subject to subparagraphs (5) and (6), on receipt of an application under subparagraph (1), the Registrar may issue a certificate of restoration in the approved form if he is satisfied that

- (a) a licensed person has agreed to act as the registered agent of the company; and
- (b) it would be fair and reasonable for the company to be restored.

(4) Where the Registrar issues a certificate of restoration under subparagraph (3), the company is deemed

- (a) never to have been struck off the CapCo Register or the IBC Register, as the case may be, and
- (b) if the company is restored on or after the re-registration date, to have

been automatically re-registered under this Act on the re-registration date.

(5) Where a company is restored on or after the applicable re-registration date, the certificate shall also state that the company has been re-registered under this Act.

(6) During the period from 1 January to 31 December 2006, the Registrar may restore an IBC or a CapCo under the applicable former Act without issuing a certificate of restoration.

(7) Where this paragraph applies, it applies in place of section 217.

Struck off  
company liable  
for fees and  
penalties.

**59.** (1) A CapCo that is struck off the CapCo Register and an IBC that is struck off the IBC Register shall remain liable for

- (a) all fees and penalties due under the applicable former Act; and
- (b) such fees and penalties that would have been payable under this Act had the company been automatically re-registered under Part III on the re-registration date.

(2) The Court shall not make an order declaring the dissolution of a company void under paragraph 55, and the Registrar shall not restore a company under paragraph 56, unless the following have been paid to the Registrar:

- (a) all fees and penalties for which the company is liable under subparagraph (1); and
- (b) the applicable restoration fee specified in Schedule 1.

Sections of this  
Act having  
effect.

**60.** (1) Sections 215 and 219 of this Act apply to, and with respect to, a CapCo or an IBC that is struck off the CapCo Register or the IBC Register.

(2) Sections 220 and 221 apply to, and with respect to, a CapCo or an IBC and its property, if the company is struck off the CapCo Register or the IBC Register, as the case may be, prior to the re-registration date but is dissolved in accordance with paragraph 54 on or after the re-registration date.

(3) Any reference in sections 215 or 219 to 220 of this Act to “the Register” shall be taken as a reference to the CapCo Register or the IBC Register, as the case may be.



**PART VIII  
MISCELLANEOUS PROVISIONS**

**61.** (1) A former Act company that is re-registered, whether by the Registrar pursuant to an application made under Part II or whether automatically under Part III, continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not

Effect of re-registration under this Act.

- (a) prejudice or affect its identity;
- (b) affect its assets, rights or obligations; or
- (c) affect the commencement or continuation of proceedings by or against the company.

(2) A former Act company that is re-registered under this Schedule shall be subject to this Act except to the extent specified in this Schedule, to the extent that this Schedule is applicable to the company.

**62.** Where, immediately before its re-registration under Part II or Part III of this Schedule, a former-Act company has a common seal, that common seal shall, for all purposes, be considered to be a valid common seal for the purposes of this Act.

Seals of re-registered companies.

**63.** The person holding office as Registrar of Companies under the Companies Act and every person holding office as a Deputy Registrar of Companies or an Assistant Registrar of Companies under that Act, immediately before the commencement of this Act, is deemed to have been appointed as Registrar of Corporate Affairs or as a Deputy or an Assistant Registrar of Corporate Affairs, as the case may be, in accordance with section 229(1) on the same terms as they were appointed under that Act.

Registrar and Deputy and Assistant Registrars of Companies. Cap. 285

**64.** A reference in any enactment to a company incorporated, continued or registered under a former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated, continued or re-registered under this Act.”

References to companies in other enactments.

Made by the Executive Council this 22<sup>nd</sup> day of November, 2006.

(Sgd.)  
SUZETTE VANTERPOOL,  
Clerk of Executive Council.

