

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000

ARRANGEMENT OF SECTIONS

Section

PART I

INTRODUCTORY

1. Citation, commencement and long title.
2. Interpretation.

PART II

ADMINISTRATION OF ORDER

3. Registrar of International Business Companies.
4. Lodging Documents, Verifying signatures.

PART III

INTERNATIONAL BUSINESS COMPANIES

5. Formation of IBCs limited by shares or guarantee.
6. Nature of an IBC.
7. Personal liability.
8. Memorandum of an IBC.
9. Articles of an IBC.
10. Certificate of due diligence.
11. Registration of Memorandum and Articles.
12. Effect of certificate of incorporation.

13. Name of IBC.
14. Reservation of name, foreign names, translations.
15. Amendment of Memorandum or Articles.
16. Supply of copies of Memorandum and Articles.
17. Powers of an IBC.
18. Validity of acts of IBC.
19. Requirement to maintain conditions of IBC.

PART IV

EXEMPTIONS FROM TAXATION AND DUTIES

20. Tax and filing exemptions.

PART V

SHARES, DEBENTURES AND CHARGES

DIVISION 1 - PROSPECTUSES

21. Restriction on inviting investments from public.
22. Invitation to public.
23. Requirement to issue forms of application for shares or debentures with prospectus.
24. Invitations to public to lend money to or deposit money with an IBC or a foreign international company, Approval of Registrar.
25. Advertisements.
26. Retention of over-subscriptions in debenture issues.
27. Registration of prospectus.
28. Document containing offer of shares to be deemed prospectus.
29. Expert's consent to issue of prospectus containing statement by him.
30. Civil liability for mis-statement in prospectus.
31. Criminal liability for mis-statement in prospectus.

DIVISION 2 – RESTRICTION ON ALLOTMENT

- 32. International bank or trust company as agent in public offer.
- 33. Prohibition of allotment unless minimum subscription received.
- 34. Application moneys to be held in trust until allotment.
- 35. Return of allotment.
- 35A. Application of Securities Order, 2001.

DIVISION 3 - SHARE CAPITAL

- 36. Application of Division 3.
- 37. Shares at disposal of directors.
- 38. Consideration for shares.
- 39. Payment for shares.
- 40. Fractional shares.
- 41. Treatment of consideration for shares.
- 42. Dividend of shares.
- 43. Alteration of share capital.
- 44. Issue of share certificates.
- 45. Validation of shares improperly issued.
- 46. Share register.
- 47. Register of members.
- 48. Cessation of membership.
- 49. Rectification of share register or register of members.
- 50. Transfer of shares.
- 51. Transfer of shares, death, bankruptcy.
- 52. Protection on seizure of shares.
- 53. Provision of financial assistance.
- 54. Purchase of own shares.
- 55. Treasury shares held – rights suspended.
- 56. Alteration of capital/surplus.
- 57. Dividend may be declared.

58. Surplus may reflect unrealised appreciation.

DIVISION 4 - DEBENTURES

59. Power to issue debentures.

PART VI

REGISTERED OFFICE AND AGENT

60. Registered office.
61. Registered agent.
62. Requirements to change IBC's registered agent.

PART VII

DIRECTORS, SECRETARY, OFFICERS

63. Election, term and removal of directors.
64. Appointment of secretary.
65. Management by directors.
66. Number of directors.
67. Register of directors and secretaries.
68. Powers of directors.
69. Emoluments of directors.
70. Committees of directors.
71. Meetings of directors.
72. Notice of meetings of directors.
73. Quorum for meetings of directors.
74. Consent of directors.
75. Alternates for directors.
76. Officers and agents.
77. Standard of care.
78. Reliance on records and reports.

79. Conflict of interests.
80. Indemnification of directors and officers.
81. Insurance.

PART VIII
PROTECTION OF MEMBERS AND CREDITORS

82. Meetings of members.
83. Notice of meeting of members.
84. Quorum for meetings of members.
85. Voting by members.
86. Voting trusts.
87. Extension of voting trust.
88. Mutual voting agreement.
89. General provisions as to voting trusts and agreements.
90. Consent of members.
91. Service of notices, etc., on members.
92. Service, etc., of documents on IBC.

PART IX
DIVISION 1 – ACCOUNTS AND AUDIT

93. Accounts to be kept.
94. Statement of accounts.
95. Auditor to be appointed.
96. Auditor need not be appointed in certain circumstances.
97. Appointment and removal of auditors.
98. Auditor ceasing to be registered.
99. Partners of auditor.
100. Remuneration of auditor.
101. Auditor may attend meetings.
102. Auditor to audit.

- 103. Powers of auditors.
- 104. Powers, duties and obligations of auditors.
- 105. Books and records, etc.
- 106. Inspection of registers and other books and records.

DIVISION 2 – CONTRACTS, DISPOSAL OF ASSETS

- 107. Contracts generally.
- 108. Contracts before incorporation.
- 109. Contracts for payment or transfer.
- 110. Notes and bills of exchange.
- 111. Power of attorney.
- 112. Authentication or attestation.
- 113. Major disposal of assets.
- 114. Proposed compromise between IBC and creditors or members.

DIVISION 3 – REGISTRATION OF CHARGES

- 115. Filing of charges.
- 116. Filing of pre-existing charges.
- 117. Filing of charges by foreign companies which becomes registered under this Order.
- 118. Register of charges to be kept by Registrar.
- 119. Endorsement of certificate of registration on debentures.
- 120. Filing of satisfaction and release of property from charge.
- 121. Extension of time and rectification of register of charges.
- 122. Documents made outside Brunei Darussalam.
- 123. Application of Division.

PART X
MERGERS, CONSOLIDATIONS AND RIGHTS OF DISSENTING MEMBERS

- 124. Interpretation.
- 125. Merge and consolidation.
- 126. Merge with subsidiary.
- 127. Effect of merger or consolidation.
- 128. Merger or consolidation with foreign company.
- 129. Redemption of minority shares.
- 130. Power of Court to intervene.
- 131. Rights of dissenting members.
- 132. Procedure following giving of notice of dissent or redemption.

PART XI
FOREIGN INTERNATIONAL COMPANIES

- 133. Interpretation.
- 134. Registration of foreign international companies.
- 135. Prohibition and restriction on foreign international company.
- 136. Registered office of foreign international companies.
- 137. Return to be lodged where documents, etc., altered.
- 138. Service on foreign international companies.
- 139. Cessation of business in Brunei Darussalam.
- 140. Liquidation or dissolution of company in place of incorporation or origin.
- 141. Names of foreign international companies.
- 142. Returns by foreign international companies.

PART XII
CONVERSION OF FOREIGN COMPANIES INTO IBCS

- 143. Conversion to IBC.
- 144. Application to Registrar for registration as an IBC.

- 145. Registration of foreign company as IBC.
- 146. Effect of conversion.
- 147. Striking off of IBC continuing to be incorporated overseas.

PART XII A
DEDICATED CELL COMPANIES

- 147A. Interpretation.
- 147B. Dedicated cell companies.
- 147C. Creation of cells.
- 147D. Dedicated and general assets.
- 147E. Position of creditors.
- 147F. Creditors of dedicated assets.
- 147G. Dedicated shares and share capital.
- 147H. Reduction of dedicated share capital.
- 147I. Name and Memorandum of DCC.
- 147J. Consent of Authority required for DCC.
- 147K. Application for consent of Authority.
- 147L. Incorporation of company as DCC.
- 147M. Liability of DCC.
- 147N. Disputes as to liability attributable to cells.
- 147O. DCC to give notice of status.
- 147P. Attribution of general assets and liabilities.
- 147Q. Liquidation of DCC.
- 147R. Transfer of dedicated assets.
- 147S. Inspection, supervisory management, etc., of DCC.

PART XIII
INSPECTION, SUPERVISORY MANAGEMENT, WINDING-UP
AND STRIKING OFF

- 148. Inspection and supervisory management.

- 149. Winding-up of IBCs.
- 150. Striking off for breach of requirements or condition.
- 151. Striking off for failure to pay prescribed fees.
- 152. Restoration to register.
- 153. Effect of striking off.
- 154. Appointment by Court of liquidator.
- 155. Dissolution of IBC struck off.

PART XIII

MIGRATION OF IBC TO COMPANY INCORPORATED UNDER COMPANIES ACT

- 155A. Interpretation of this Part
- 155B. Migration of IBC to company incorporated under Chapter 39
- 155C. Registration of IBC as company incorporated under Chapter 39
- 155D. Effect of migration

PART XIV

MISCELLANEOUS AND GENERAL

- 156. Migration of IBCs to overseas jurisdiction.
- 157. *Repealed.*
- 157A. Power to issue directions
- 158. Offences in relation to false statements.
- 159. Offences by bodies corporate.
- 160. Office of the Registrar; Disclosure of Name and Agent.
- 161. Service, etc., of documents on Registrar.
- 162. Inspection, production and evidence of documents kept by Registrar.
- 163. Certificate of good standing.
- 164. Regulations.
- 165. Fees and penalties recoverable as civil debts.
- 166. Power to amend Schedule.

167. Application of Insolvency Order, 2016 to IBCs.

168. General power of exemption.

FIRST SCHEDULE — MODIFICATIONS OF PARTS III, V AND VI OF INSOLVENCY ORDER, 2016 IN THEIR APPLICATION TO IBCs

SECOND SCHEDULE — MEMORANDUM OF ASSOCIATION COMPANY LIMITED BY SHARES

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000

In exercise of the power conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I INTRODUCTORY

Citation, commencement and long title.

1. (1) This Order may be cited as the International Business Companies Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is “An Order to provide for the formation, regulation and supervision of international business companies and for connected purposes”.

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

“approved auditor” means a person approved by the Authority under section 95(4);

[S 37/2003]

“Articles” means the Articles of Association or other constituent documents of a company incorporated, registered or converted under Parts III, XI or XII respectively;

[S 37/2003]

“audit period” means the period in respect of which the financial statements of a company are made up;

[S 37/2003]

“Authority” means the Autoriti Monetari Brunei Darussalam established by the Autoriti Monetari Brunei Darussalam Order, 2010;

[S 103/2010]

“certificate of due diligence” means a certificate completed and filed by a registered agent under any of sections 10, 50, 134(2)(g) or 144(1)(f);

“the Court” means the High Court or an Intermediate Court;

“charge” includes a debenture, mortgage and any agreement to give or execute a debenture, charge or mortgage;

[S 37/2003]

“Companies Act” means the Companies Act (Chapter 39);

“DCC” means a company incorporated as, or converted into, a DCC in accordance with Part XIA;

[S 75/2013]

“debenture” includes debenture stock, bonds and other debt securities or obligations of a company whether constituting a charge on the assets of a company or not and includes the right or option to acquire debt obligations;

[S 37/2003]

“director” includes an alternate director and any person occupying the position of a director by whatever name so called;

[S 37/2003]

“domestic company” means a company incorporated or registered under the Companies Act (Chapter 39);

“FIC” means a foreign international company registered under Part XI;

[S 37/2003]

“foreign company” includes a company or other body incorporated or registered outside Brunei Darussalam;

“foreign international company” means a foreign company registered under Part XI;

“IBC” means an international business company incorporated under Part III or converted under Part XII;

“international trust” shall have the meaning ascribed thereto in section 3 of the International Trusts Order, 2000;

“limited by shares” and “limited by guarantee” shall be construed in accordance with section 5(3);

“limited life company” means an IBC which complies with section 8(1)(f);

“member” means a person who holds shares in a company and, in the case of a company limited by guarantee, any person who is liable to contribute to the assets on a winding-up;

[S 75/2013]

“Memorandum” means the Memorandum of Association of a company or any analogous constituent documents however described;

[S 37/2003]

“the Minister” means the Minister of Finance;

“person” includes, as well as an individual, any company or association or body of persons, corporate or unincorporate, including a trust notwithstanding that a trust lacks a separate legal personality;

“preference share” means a share in an IBC entitling the holder to any preference over holders of other classes of shares, including without limitation any preferential entitlement upon liquidation, or in respect of payment of dividend or other payment or right conferred including voting rights;

“prescribed” means prescribed by regulations made under section 164;

“Register” means the Register of International Business Companies maintained under section 11, and references to “registered” and “registration” shall be construed accordingly;

“register of members” means the register of members of an IBC limited by guarantee which is required by section 47;

[S 37/2003]

“registered agent” in relation to an IBC or FIC, means a person duly licensed to conduct international companies management business under the Registered Agents and Trustees Licensing Order, 2000 which is the registered agent for the time being of that IBC or FIC and where the context so admits includes a wholly-owned subsidiary of a registered agent authorised under section 3(3) of the Registered Agents and Trustees Licensing Order, 2000;

[S 37/2003]

“Registrar” means such person as is appointed by His Majesty the Sultan and Yang Di-Pertuan as the Registrar of International Business Companies for the purposes of this Order;

“relevant modification” shall be construed in accordance with subsection (2);

“resident in Brunei Darussalam” means a person ordinarily residing in Brunei Darussalam or being a company or other body corporate or unincorporated, organised under the laws of Brunei Darussalam;

“resolution” in relation to the directors or a committee of directors of an IBC, shall be construed in accordance with subsection (3) and, in relation to the members of an IBC or any other company, shall be construed in accordance with subsection (4);

“75 per cent resolution” in relation to the members of an IBC or any other company, shall be construed in accordance with subsection (5);

“securities” includes shares, debt obligations of every kind, and options, warrants and rights to acquire debt obligations;

[S 37/2003]

“series”, in relation to securities, means a division of a class of security;

[S 37/2003]

“shares” means shares in the capital of a company and (where the content so admits) includes stock, units, options, warrants, rights to acquire shares and dedicated shares;

[S 37/2003]

“surplus” in relation to a company, means the excess of net assets of the company over its issued 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;

“written law” includes all Acts, Enactments and Proclamations, and subsidiary legislation, or any part thereof, but does not include any Act of Parliament nor any Order of Her Britannic Majesty in Council, Royal Charter or Royal Letters Patent nor any law which no authority in Brunei Darussalam is empowered to amend.

(2) In relation to any provision of this Order, the expression “subject to any relevant modification” means subject to any modifications, limitations or provisions in the Memorandum or Articles.

[S 37/2003]

(3) Unless otherwise defined in the Articles, in this Order the expression “resolution” in relation to directors of an IBC, means –

- (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of the IBC, by affirmative vote of a simple majority, or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or
- (b) a resolution consented to in writing by a simple majority, or such larger majority as may be specified in this Order or in the Articles, of all the directors or, as the case may be, of all the members of the committee,

but where a director is given more than one vote in any circumstances, he shall in those circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

(4) Unless otherwise defined in the Articles, in this Order the expression “resolution”, in relation to the members of an IBC or any other company, means –

- (a) a resolution approved at a duly constituted meeting of the members of the company by the affirmative vote of a simple majority, or such larger majority as may be specified in the Articles, of those votes of the shares which were present at the meeting and entitled to vote on the subject matter of the resolution and which were voted and did not abstain; or
- (b) a resolution approved at a duly constituted meeting of the members of the company by the affirmative vote of –
 - (i) a simple majority, or such larger majority as may be specified in the Articles, of those votes of each class or series of shares which were present at the meeting and entitled to vote on the subject matter of the resolution as a class or series and which were voted and did not abstain; and
 - (ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares so entitled to vote which were present at the meeting and which were voted and did not abstain; or
- (c) a resolution passed or consented to in writing by a simple majority, or such larger majority as may be specified in the Articles, of the votes of members entitled to vote on the subject matter of the resolution; or
[S 37/2003]
- (d) a resolution passed or consented to in writing by –
[S 37/2003]
 - (i) a simple 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 on the subject matter of the resolution as a class or series; and

- (ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares so entitled to vote.

(5) In this Order, the expression “75 per cent resolution”, in relation to the members of an IBC or any other company, means a resolution which would fall within one of paragraphs (a) to (d) of subsection (4) if for the words “simple majority”, in each place where they occur in those paragraphs, there were substituted the words “75 per cent majority”.

(6) Any reference in this Order 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 actually voting; and a reference to shares being present at a meeting shall be given a corresponding construction.

(7) In this Order, a company is a subsidiary of another company if –

(a) it is controlled by –

- (i) that other company;
- (ii) that other company and one or more companies each of which is controlled by that other company; or
- (iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a subsidiary of that other company.

(8) In this Order, a company is the holding company of another only if that other company is its subsidiary.

(9) In this Order, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.

(10) In this Order, a company is controlled by another company or person or by two or more companies only if –

- (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by for the benefit of those other companies; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect majority of the board of directors of the first-mentioned company.

PART II

ADMINISTRATION OF ORDER

Registrar of International Business Companies.

3. (1) His Majesty the Sultan and Yang Di-Pertuan shall appoint –
- (a) a Registrar of International Business Companies to have the charge and control of the International Companies Registry and to carry out the duties and functions vested in him by or under this or any other Order and such appointment shall be publicly notified;
 - (b) from time to time such Assistant or Deputy Registrars and other officers as are required for the purposes of this Order.
- (2) Anything by this Order appointed or authorised or required to be done by the Registrar may be done by any such Assistant or Deputy Registrars and shall be as valid and effectual as if done by the Registrar subject to such conditions and restrictions as may be set out in the instrument of appointment or in any subsequent changes thereto.
- (3) All Courts, judges, and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and of any Assistant or Deputy Registrar.
- (4) The Authority, the Registrar or any person authorised in writing by either of them may at any time and without payment of any fee inspect any book, minute book, register or record required by or under this Order to be kept by an IBC or a FIC.

[S 37/2003]

(5) Any person who, except for the purposes of this Order, or except in the course of any criminal proceedings, or as required by any written law or an order of the Court makes a record of, divulges or communicates to any other person any information which he has acquired by reason of such inspection shall be guilty of an offence against this Order and liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one hundred thousand dollars.

[S 37/2003]

(6) A company or any officer thereof shall, on being required by the Authority, the Registrar, or any person authorised in writing by either of them, produce any such book, register or record.

[S 37/2003]

(7) A company or any officer thereof shall not obstruct or hinder the Authority, the Registrar or a person so authorised while exercising any of the powers referred to in subsections (4) and (5).

[S 37/2003]

(8) There shall be paid to the Registrar such fees as are prescribed.

Lodging Documents, Verifying signatures.

4. (1) Except as otherwise provided by this Order, every document required or permitted to be lodged or filed with the Registrar under the provisions of this Order shall be lodged or filed through a registered agent.

[S 37/2003]

(2) Every application to the Registrar for any certificate issued under the Order or for any extract or copy of any document filed with the Registrar shall be made through a registered agent.

(3) Where this Order requires that the Memorandum and Articles of a company be sent to the Registrar, or that any other document be lodged or filed with or provided to the Registrar, unless otherwise specifically provided, such documents may be delivered and verified in such manner as the Registrar approves.

[S 37/2003]

(4) Any document referred to in this section may be printed or otherwise mechanically or, in a manner acceptable to the Registrar, electronically reproduced or signed.

[S 37/2003]

(5) A document printed, reproduced or signed in accordance with subsection (4) may be accepted in evidence, notwithstanding any provision to the contrary in the laws of Brunei Darussalam.

[S 37/2003]

(6) Without limitation, where a notice or document is required by any written law other than this Order to be lodged or filed with the Registrar, he may at his discretion accept a photocopy of the notice or document or a copy by telefax or other electronic means.

[S 37/2003]

PART III

INTERNATIONAL BUSINESS COMPANIES

Formation of IBCs limited by shares or guarantee.

5. (1) Subject to the provisions of this Order, a registered agent or its wholly owned subsidiary duly authorised pursuant to section 3(3) of the Registered Agents and Trustees Licensing Order, 2000 may, by subscribing to the Memorandum and to Articles, and complying with the provisions of this Order in respect of registration, form an incorporated company which is an international business company.

(2) The subscription of the registered agent to a Memorandum and to Articles must, in each case, be made in the presence of another person who signs his name as a witness.

- (3) An IBC may be –
- (a) a company having the liability of its members limited by the Memorandum to the amount, if any, unpaid on the shares respectively held by them (an IBC “limited by shares”); or
 - (b) a company having the liability of its members limited (subject to subsection (4)(b)) by the Memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (an IBC “limited by guarantee”);
 - (c) an unlimited liability company;
 - (d) a limited life company;
 - (e) a company limited by shares and limited by guarantee.

[S 37/2003]

- (4) Where an IBC is limited by shares and by guarantee –

[S 37/2003]

- (a) subject to any relevant modification, the members giving an undertaking in accordance with subsection (3)(b) need not hold shares in the IBC; and

[S 37/2003]

- (b) where any member does hold shares, his liability (as specified in accordance with subsection (3)(b)) shall be increased by the amount, if any, unpaid on those shares.

(5) All shares in an IBC shall be registered shares (and, accordingly no shares in an IBC may be issued to bearer) and shares in an IBC may be either shares with par value or shares with no par value.

[S 37/2003]

(6) An IBC may be formed for any object or purpose not prohibited under this Order or under any other written law for the time being in force in Brunei Darussalam.

(7) Except in so far as this Order otherwise expressly provides, the Companies Act (Chapter 39) does not apply to an IBC.

Nature of an IBC.

6. (1) For the purposes of this Order, neither an IBC nor a foreign international company shall without the prior written consent of the Authority in each case first had and obtained –

[S 103/2010]

- (a) carry on business with persons resident in Brunei Darussalam;
- (b) own an interest in land situated in Brunei Darussalam, other than such a lease as is referred to in subsection (3)(e);
- (c) carry on banking business unless licensed to do so under the International Banking Order, 2000;
- (d) carry on any business which constitutes international insurance business unless licensed to do so under the International Insurance and Takaful Order, 2002 (S 43/2002);

[S 37/2003]

- (e) carry on any business of providing the registered office for companies;
- (f) provide any international business services as defined in the Registered Agents and Trustees Licensing Order, 2000, unless licensed to do so under that Order; or
- (g) carry on any international business, investment or financial activity requiring a licence under the Securities Market Order, 2013 (S 59/2013) without an appropriate licence or consent under those Orders.

[S 37/2003; S 53/2017]

(2) *(Repealed by S 37/2003).*

(3) For the purposes of paragraph (a) of subsection (1), an IBC or a foreign international company shall not be treated as carrying on business with persons resident in Brunei Darussalam by reason only that –

[S 37/2003]

- (a) it makes or maintains deposits with a person carrying on banking business in Brunei Darussalam;
- (b) it makes or maintains professional contact with advocates and solicitors, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business in Brunei Darussalam;
- (c) it prepares or maintains books and records in Brunei Darussalam;
- (d) it holds meetings of its directors or members in Brunei Darussalam;
- (e) it holds a lease of any property for the purposes of its operation or as accommodation for its officers or employees; or
- (f) it holds securities in an IBC, a foreign international company, or an international trust or a company incorporated under the Companies Act (Chapter 39) or a partnership interest as defined in the International Limited Partnerships Order, 2000 (S 45/00) or a statutory or other Government body however established in Brunei Darussalam;

[S 37/2003]

- (g) a person resident in Brunei Darussalam holds shares either alone or jointly with another person in an IBC or a FIC.

[S 37/2003]

- (4) It shall be a condition of continuing to be an IBC that –

- (a) the IBC will not, without prior written consent of the Authority as provided for in subsection (1) issue, circulate or distribute in Brunei Darussalam any prospectus offering for subscription of any securities in the IBC; and

[S 37/2003; S 103/2010]

- (b) on the anniversary of its incorporation in the year following the registration of the Memorandum and Articles and in every succeeding year the IBC will pay the prescribed renewal fee to the Registrar.

Personal liability.

7. (1) Subject to subsections (2) and (3), no member, director, officer, agent or liquidator of an IBC shall be liable for any debt, obligation or default of the IBC, other than to such an extent as any such member, officer, agent or liquidator shall have contracted or be otherwise bound to do whether as principal debtor, guarantor, surety or otherwise in the ordinary course of their business.

[S 37/2003]

(2) Subsection (1) has effect subject to any specific provision to the contrary in this Order or any other law for the time being in force or applying in Brunei Darussalam.

(3) If at any time there is no member of an IBC, any person purporting to do business in the name or on behalf of the IBC shall be personally liable for the payment of all debts contracted during that time and proceedings in respect of those debts may be instituted against that person without the joinder of the IBC or any other person.

Memorandum of an IBC.

8. (1) The Memorandum must include –
- (a) the name of the company;
 - (b) the address in Brunei Darussalam of the company's registered office;
 - (c) the name and address in Brunei Darussalam of the registered agent of the company;
 - (d) the objects for which the company is incorporated;
 - (e) a statement that the company may not carry on any of the activities specified in subsection (1) of section 6, except as provided in that subsection; and
 - (f) where the company has a limited life or duration, the period of such life or duration which shall in no case exceed thirty years, and subject thereto –
 - (i) the circumstances of termination, whether expressed in terms of time or in terms of the occurrence of an event or both;

- (ii) a requirement that the company has at all times at least two members;
 - (iii) the words “Limited Duration Company” or “Limited Life Company”, or the abbreviations “LDC” or “LLC” (as the case may be), in the name of the company;
- [S 37/2003]*
- (iv) such other matters as may for the time being be a requirement for the recognition of the company as a limited life company.

(2) If the IBC is to have share capital (whether it is limited by shares or limited by shares and guarantee) the Memorandum must also include –

- [S 37/2003]*
- (a) a statement of the IBC’s authorised capital (which may be in more than one currency), setting out the aggregate of the value of all shares with par value that the IBC is authorised to issue or, as the case may be, the amount, if any, to be represented by shares without par value that the IBC is authorised to issue;
 - (b) a statement of the currency or currencies in which shares in the IBC will be issued (being the currency or currencies in which the authorised capital is stated);
 - (c) a statement of the number of classes and series of shares, the number of shares of each class or series and either –
 - (i) in the case of an IBC to have shares with par value, a statement of the par value of those shares; or
 - (ii) in the case of an IBC to have shares of no par value, a statement that the company's shares will be without par value; and
 - (d) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the IBC is authorised to issue or, if the directors are to be authorised to fix any of those matters, an express grant of authority to the directors from time to time to fix by a resolution any such

designations, powers, preferences, rights, qualifications, limitations or restrictions as are not fixed by the Memorandum, and the exercise of any such express grant of authority to the directors as is mentioned in paragraph (d) may be made subject to terms and conditions specified in the Memorandum.

(3) If the IBC is to be limited by guarantee, the Memorandum must also contain a declaration signed by each member that he undertakes to contribute to the assets of the IBC in the event of it being wound up during the time that he is a member or within one year afterwards such amount as may be required, not exceeding (subject to subsection (4)) an amount specified in the Memorandum –

- (a) for a payment of the debts and liabilities of the IBC contracted before he ceases to be a member and of the costs charges and expenses of winding-up; and
- (b) for adjustment of the rights of the contributories among themselves.

(4) Where an IBC limited by guarantee has more than one class of member, the Memorandum may contain a declaration that, in the event of the IBC being wound up, the amount of the undertaking of the members of a particular class shall be unlimited.

(5) For the purposes of subsection (1)(d), if the Memorandum of an IBC contains a statement that the object or purpose of the company, or one of its objects or purposes, is to engage in any act or activity that is not prohibited under any law for the time being in force in Brunei Darussalam, then, subject to section 6 and to any relevant modifications, the effect of that statement shall be to make all acts and activities that are not illegal in Brunei Darussalam part of the objects or purposes of the company.

[S 37/2003]

(6) The Memorandum, when registered, binds the company and its members to the same extent as if it had been signed and sealed by each member and contained covenants on the part of each member to observe all its provisions.

Articles of an IBC.

9. (1) When submitted for registration under section 11, the Memorandum must be accompanied by Articles prescribing regulations for the IBC.

(2) The Articles, when registered, bind the company and its members to the same extent as if they had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the Articles.

(3) Subject to compliance with this Order, an IBC may adopt, with or without modifications, all or any of the provisions contained in the Second Schedule as, or as part of, its Memorandum and Articles.

Certificate of due diligence.

10. (1) Upon applying for the registration of the Memorandum and Articles of a proposed IBC in accordance with section 11, the registered agent shall file with the Registrar in the prescribed form a certificate of due diligence under this section signed by an individual who is a director or a designated officer of the registered agent.

[S 37/2003]

(2) A registered agent, director or designated officer who wilfully or negligently signs or files a certificate of due diligence which is untrue, misleading or based on incomplete information shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year, a fine not exceeding one hundred and fifty thousand dollars or both.

[S 37/2003]

(3) Where an individual ceases to be a director or designated officer for the purposes of this section, it shall be the responsibility of the registered agent forthwith so to notify the Registrar in writing. A registered agent who fails to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred and fifty thousand dollars.

(4) In this section, “designated officer” means an individual nominated by a registered agent and notified in writing to the Registrar as a person having authority to sign a certificate of due diligence.

[S 37/2003]

Registration of Memorandum and Articles.

11. (1) The Memorandum and Articles of a proposed IBC shall be delivered to the Registrar who shall retain them and, subject to subsection (2), shall register them in a register maintained by him and known as the Register of International Business Companies.

(2) The Registrar shall not register the Memorandum or the Articles of a proposed IBC unless –

- (a) they are accompanied by a certificate of due diligence under section 10 with respect to the proposed IBC;
- (b) they are also accompanied by the prescribed fee and by a certificate (which may be included in the certificate of due diligence given under section 10) given in writing by the registered agent and certifying that the requirements of this Order in respect of registration have been complied with; and
- (c) the Registrar is satisfied that the requirements specified in sections 8, 9 and 10 respectively have been complied with,

but, for the purposes of paragraph (c), the Registrar may treat the certificate given under paragraphs (a) and (b) as sufficient evidence of compliance.

(3) On the registration of the Memorandum and Articles, the Registrar shall certify under his hand that the company is incorporated as an IBC, and issue a certificate of incorporation to that effect under his Seal.

Effect of certificate of incorporation.

12. (1) From the date of incorporation mentioned in the certificate of incorporation issued by the Registrar under section 11(3), such persons as may from time to time be members of the IBC shall be a body corporate by the name contained in the Memorandum, having a separate legal personality and, subject to the terms of the Memorandum, the full capacity of an individual who is *sui juris*.

(2) A certificate of incorporation issued by the Registrar under section 11(3) shall be *prima facie* evidence that all the requirements of this Order in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is an IBC authorised to be registered and duly registered under this Order.

Name of IBC.

13. (1) Application may be made to the Registrar in the prescribed form for approval of a name at no cost, or to reserve a name pursuant to section 14, and except with the consent of the Authority or in the case of a licensed activity, the grant of the relevant licence, an IBC shall not be registered, either originally or on a change of name, by a name which –

[S 37/2003; S 103/2010]

- (a) is otherwise than in romanised characters;
- (b) in the opinion of the Registrar, is undesirable;
- (c) is or includes a name of a kind that the Registrar is not otherwise willing to accept for registration;
- (d) is identical with that under which a company in existence is already incorporated under this Order or registered under the Companies Act (Chapter 39) or so nearly resembles the name as to be calculated or likely to deceive, except where the company in existence gives its consent; or
- (e) contains the words “Assurance”, “Bank”, “Building Society”, “Chamber of Commerce”, “Chartered”, “Cooperative”, “Imperial”, “Insurance”, “Municipal”, “Royal”, “Trust Company”, “Trustee Company”, or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest –

[S 37/2003]

- (i) the patronage of His Majesty the Sultan and Yang Di-Pertuan or that of a member of the Royal Family of Brunei Darussalam or of or any other country or territory;
- (ii) a connection with the Government or a department or ministry of the government of any other country or territory; or
- (iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter, Order or Decree,

[S 37/2003]

- (iv) endorsement as an Islamic instrument, body or product in the absence of such an endorsement having been given, provided that the Registrar may permit the use of the words “Private Trust Company” in conjunction with each other as part of the name of a company acting as a trustee pursuant to paragraph 4 of the Third Schedule to the Registered Agents and Trustees Licensing Order, 2000 (S 54/00).

[S 37/2003]

(2) An IBC shall have as part of, or at the end of, its name the word or phrase “Berhad”, “Sendirian Berhad”, “Limited”, “Corporation”, “Incorporated”, “Societe Anonyme”, “Sociedad Anonima”, “Company”, “Limitada”, “Societe par actions”, “Societe a responsabilite”, “Gesellschaft mit beschränkter Haftung” or “Aktiengesellschaft” or the abbreviation “Bhd”, “Sdn. Bhd.”, “Ltd”, “Corp”, “Inc”, “A/S”, “A/G”, “N.V.”, “B.V.”, “GmbH”, “S.A.R.L.” “S.a.r.l” or “S.A.” or any other words or abbreviations which signify limited liability in romanised characters, and if the company is a limited life company, it shall comply with section 8(1)(f)(iii):

Provided that where the words, phrase or abbreviation “Berhad”, “Sendirian Berhad.”, “Bhd.”, or “Sdn. Bhd.” are used the abbreviation “NBD” shall also be used in the name of the IBC, and provided that where the word “Brunei” is used it shall, except with the consent of the Registrar, appear in brackets.

[S 37/2003]

(3) An IBC may, in accordance with section 15, amend its Memorandum so as to change its name.

(4) If an IBC is incorporated under a name which –

(a) is identical with a name under which a company already in existence is for the time being registered under this Order or the Companies Act (Chapter 39) or under any law for the time being in force in Brunei Darussalam providing for the registration of business names;

(b) so nearly resembles such a name as to be calculated or likely to deceive; or

(c) is for any other reason given by the Registrar unacceptable,

the Registrar may give notice to the IBC to change its name and, if it fails to do so within sixty days from the date of the notice, the Registrar shall (without further reference to the IBC) amend the Memorandum of the IBC so as to change its name to such name as the Registrar deems appropriate.

(5) Where the Registrar amends the Memorandum of an IBC by virtue of subsection (4), he shall publish notice of the change in the *Gazette*.

(6) Subject to subsections (1), (2) and (4), where an IBC changes its name or the Registrar effects a change of name under subsection (4), the Registrar shall enter the new name on the Register in place of the former name and shall issue a certificate of incorporation indicating the change of name.

(7) A change of name shall not affect any rights or obligations of the IBC or render defective any legal proceedings by or against the IBC; and all such proceedings that have been commenced against the IBC by its former name may be continued against it by its new name.

(8) The Registrar shall on registration allocate to every IBC in sequential order a distinguishing number prefixed by the abbreviation “NBD”.

Reservation of name, foreign names, translations.

14. (1) In any case where –

- (a) a person lodges with the Registrar an application in the prescribed form for the reservation of a name set out in the application as the name of a proposed IBC or the name to which an existing IBC proposes to change its name; and
- (b) the Registrar considers that the application is made in good faith and is satisfied that the proposed name is a name by which the proposed or existing IBC could be registered without contravention of subsections (1) and (2); and
- (c) the application is accompanied by the prescribed fee,

the Registrar shall reserve the proposed name for a period of three months from the date on which the application is lodged.

(2) During the period for which a name is reserved under subsection (1) no person (other than the proposed or existing IBC in respect of which the name is reserved) shall be registered whether originally or on a change of name, under the reserved name or under any name which, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for it.

(3) In subsection (2) “registered” includes registered as a foreign international company converted, continued or otherwise brought under this Order or under the Companies Act (Chapter 39) or under any other law for the time being in force or applying in Brunei Darussalam providing for the registration of business names, including without limitation the International Limited Partnerships Order, 2000.

(4) The reservation of a name under subsection (1) in respect of a proposed or existing IBC does not in itself entitle the proposed or existing IBC to be registered by that name, either originally or on a change of name.

(5) For the purposes of the administration of this Order, the name of the company as it appears in the English translation shall be the name which is registered under this Order, provided that a company may in addition but not by way of substitution employ a rendition of its name adopting an accurate translation of its name expressed in Arabic or Cyrillic script, Chinese or Japanese characters, or other recognised national alphabet script or characters and the company shall be deemed to be also registered with the name expressed in the foreign language, alphabet, or characters.

(6) Where it is proposed that a company name appear as permitted pursuant to subsection (5), the company shall lodge a certified translation thereof together with an application in the prescribed form with the Registrar either at the time of filing the documents provided for in section 11 or a later date, together with the prescribed fee.

(7) For the purpose of this section, a “certified translation” means a translation into the English language certified as a correct translation by a translator acceptable to the Registrar before –

[S 37/2003]

- (a) a diplomatic or consular officer of any country or territory;
- (b) a notary public, justice of the peace, solicitor, advocate or similar person of any country or territory;
- (c) a person holding an analogous position to that of the Registrar in any country or territory.

[S 37/2003]

(8) It shall be the responsibility of the IBC to facilitate the means by which the foreign name is endorsed on the certificate of incorporation, which shall bear a certificate signed by the Registrar to the effect that the foreign name so appearing has been duly approved by him.

(9) No foreign name shall be employed without or in isolation from the registered name.

(10) Where under this Order a company is required to lodge with the Registrar any instrument, certificate or document or a certified copy thereof and the same is not written in the English language, but is written in a foreign language, alphabet, or characters, the Registrar may at his discretion accept the same as an original document, providing it is accompanied by a certified translation thereof.

[S 37/2003]

Amendment of Memorandum or Articles.

15. (1) Subject to any relevant modification, an IBC may amend its Memorandum or Articles by a resolution of its members or, where permitted by its Memorandum or Articles, by a resolution of its directors.

(2) An IBC that amends its Memorandum or Articles shall within twenty one days of making an amendment pursuant to subsection (1) submit to the Registrar, together with the prescribed fee, a copy of the resolution under subsection (1) amending the Memorandum or Articles, as the case may be, certified as a true copy by a director, the resident secretary or the IBC's registered agent and, subject to subsection (3), the Registrar shall retain the certified copy and register the amendment to which it relates, provided that the Registrar may require replacement Memorandum or Articles to be filed where in his opinion this is desirable owing to the nature, extent or effect of any amendment made in accordance with this section and the original or replaced Memorandum and Articles shall remain on the file of the company.

[S 37/2003]

(3) Where the amendment to the Memorandum is or includes a change in the name of the IBC, the Registrar shall not register the amendment unless he is satisfied that he can do so, having regard to sections 13 and 14.

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

(5) An IBC which fails to comply with subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars and to a further fine not exceeding one hundred dollars for each day after conviction on which the failure continues.

Supply of copies of Memorandum and Articles.

16. (1) On payment to the registered agent of an IBC of the specified fee, a copy of the Memorandum and a copy of the Articles shall be given to any member or director who requests a copy.

[S 37/2003]

(2) In subsection (1), “the specified fee” means a fee of such amount, not exceeding twenty-five dollars, as the registered agents may determine to be reasonably necessary to defray the costs of preparing and furnishing the documents requested.

[S 37/2003]

Powers of an IBC.

17. (1) Subject to any relevant modification, any provisions to the contrary in this Order or any other law, and compliance with any conditions imposed by this Order an IBC has the power, and full capacity to carry on or undertake any business or activity, enter into any transaction and for such purposes to have full rights, powers and privileges 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 IBC.

[S 37/2003]

(2) Without prejudice to the generality of subsection (1), the powers of an IBC include the power to do the following –

- (a) to issue any of the following types of shares –
 - (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;
 - (b) to issue ordinary shares, preferred shares, limited shares or redeemable shares;
 - (c) to issue shares that entitle participation only in certain assets;
 - (d) to issue options, depository receipts, warrants or rights, or instruments of a similar nature, to acquire any securities of the IBC;
- [S 37/2003]*
- (e) to issue securities that, at the option of the holder or of the IBC or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the IBC or any property then or to be owned by the IBC;
 - (f) subject to sections 54(2) and (3) to purchase, redeem or otherwise acquire and hold its own shares;
 - (g) to guarantee a liability or obligation of any person and secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose;
 - (h) to protect the assets of the IBC for the benefit of the IBC, its creditors or its members or, at the direction of the directors, for the benefit of any person having a direct or indirect interest in the IBC;
 - (i) to issue shares in any one or more currencies other than that of Brunei Darussalam; and
 - (j) to make gifts or donations and to enter into any transaction and, to do execute and perform any act deed matter or thing which may lawfully be done whether or not the same may, or may not, be for its immediate commercial benefit or for the purpose of directly advancing its own business.

(3) For the purposes of subsection (2)(h), notwithstanding any other provision of this Order or of any other law (including any rule of law to the contrary), the directors may cause the IBC to transfer any of its assets in trust to one or more trustees or to any company, association, partnership, foundation or similar entity.

(4) With respect to any such transfer as is referred to in subsection (3), the directors of the IBC may provide that the IBC, its creditors, its members or any person having a direct or indirect interest in the IBC, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any similar interest.

(5) The rights or interests of any existing or subsequent creditor of the IBC in any assets of the IBC shall not be affected by any such transfer as is referred to in subsection (3), and those rights or interests may be asserted against any transferee in any such transfer.

Validity of acts of IBC.

18. (1) No act of an IBC and no transfer of property of any description by or to an IBC shall be invalid by reason only of the fact that the IBC 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 IBC to prohibit the performance of any act or the transfer of property of any description by or to the IBC; or
- (b) in proceedings by the IBC, whether acting directly or through a receiver, trustee or other legal representative, or through members in a derivative action, against any present or former directors of the IBC for loss or damage due to their wilful unauthorised act or gross negligence.

[S 37/2003]

(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 IBC 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 doing so, the Court may, in applying this subsection, award to the IBC 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 anticipated profits to be derived from the performance of the contract.

Requirement to maintain conditions of IBC.

19. (1) If a company incorporated as an IBC ceases at any time to satisfy any of the requirements of section 6(1) and continues to do so for a period of at least thirty days, then at the expiry of those thirty days, the IBC shall notify the Registrar of that fact, specifying the requirement or requirements with which it fails to comply.

(2) If an IBC wilfully contravenes subsection (1) or fails to comply with any condition in section 6(4), it shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and a further fine of one hundred dollars for every day after conviction on which the contravention or failure continues.

(3) The provisions of subsections (1) and (2) are without prejudice to the power of the Registrar under sections 150 or 151 to take steps to strike off an IBC where he has reasonable cause to believe that the IBC no longer satisfies the requirements of section 6(1) or has failed to comply with the condition in section 6(4)(a).

(4) An IBC shall make an annual return in the prescribed form, and shall lodge the return with the Registrar not later than 42 days from the date of its registration. If default is made in complying with this subsection, a penalty of US\$50 shall be payable by the IBC.

[S 37/2003]

PART IV
EXEMPTIONS FROM TAXATION AND DUTIES

Tax and filing exemptions.

20. (1) No corporate tax, income tax, tax on capital gains or other direct or indirect tax shall be levied, withheld or collected in respect of an IBC or a foreign international company incorporated, converted or registered under this Order in connection with any activity, business, investment or otherwise and without limitation of the foregoing –

(a) on or in respect of any dividends or earnings attributable to any activities, share, debt or securities of an IBC or a foreign international company; or

(b) on or in respect of any dividends, interest or other returns from any shares, securities, deposits or other borrowings of an IBC or a foreign international company or any assets managed by an IBC or a foreign international company.

[S 37/2003]

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any shares, securities or assets of an IBC or a foreign international company or in respect of the transfer of any such shares, securities or assets.

(3) Notwithstanding anything in the Stamp Act (Chapter 34) duty shall not be chargeable on any of the following –

(a) instruments relating to transfers of any property to or by an IBC or a foreign international company;

(b) instruments relating to transactions in respect of the shares, debt obligations or other securities of an IBC or a foreign international company;

(c) instruments relating in any way to the assets or activities of an IBC or a foreign international company.

(4) If, with respect to any goods imported or to be imported by an IBC or a foreign international company, the Authority is satisfied –

[S 103/2010]

- (a) that the goods are not being made or manufactured in Brunei Darussalam;
- (b) that the goods are essential .as equipment or fixtures for the purposes of conducting international business in Brunei Darussalam and will be used exclusively for those purposes; and
- (c) that the IBC or a foreign international company will notify the Authority prior to the sale, transfer or disposal of the goods (whether within or outside Brunei Darussalam),

[S 103/2010]

the Authority may by order exempt the IBC or a foreign international company from all, or so much as he considers appropriate, of any customs duty which would otherwise be levied in respect of the goods.

[S 37/2003; S 103/2010]

(5) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34) and expressions used in subsection (4) have the same meaning as in the Customs Act (Chapter 36).

(6) The exemption from taxes and duty conferred on an IBC or a foreign international company by subsections (1) to (3) may, at no extra charge, be evidenced by a certificate issued by the Authority confirming that the IBC or a foreign international company is so exempt; and without prejudice to the possibility of the issue of a further such certificate, any such certificate shall be valid for a period of ten years from the date thereof.

[S 103/2010]

(7) No filing, return or financial information shall be required from an IBC or a foreign international company in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

PART V
SHARES, DEBENTURES AND CHARGES
DIVISION 1 – PROSPECTUSES

Restriction on inviting investments from public.

- 21.** (1) No person shall –
- (a) issue an invitation to the public to deposit money with or lend money to an IBC or a foreign international company; or
 - (b) issue an invitation, or distribute forms of application, to the public to subscribe for shares or debentures in an IBC or a foreign international company,

otherwise than in accordance with this Part.

(2) Any reference in this Order to an invitation or offer to the public shall be construed as including an invitation or offer which is not addressed exclusively to a restricted circle of persons.

(3) For the purposes of subsection (2), an invitation or offer to the public shall not be considered to be addressed to a restricted circle of persons unless –

- (a) the invitation or offer is addressed to an identifiable category group or body of persons to whom it is directly communicated by the person making the invitation or the offer or by his appointed agent; or
- (b) such persons are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation or offer,

and the number of persons to whom the invitation or offer is communicated does not exceed fifty.

Invitation to public.

22. Any IBC or foreign international company which, or any officer, director, agent or any other person acting or purporting to act on behalf of the company who –

[S 37/2003]

- (a) issues an invitation or distributes forms of application to the public or to any member of the public to subscribe for shares or debentures in the company; or
- (b) issues an invitation to the public or to any member of the public to deposit money with or lend money to the company,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both, unless –

- (i) the Registrar has given his prior written consent to the issuing of that invitation or the distribution of those forms of application to the public; and
- (ii) that invitation or the distribution of forms of application to the public is made in accordance with this Part.

(2) *(Repealed by S 37/2003).*

Requirement to issue forms of application for shares or debentures with prospectus.

23. (1) Subject to section 21, a person shall not issue, circulate or distribute any form of application for shares in or debentures of an IBC or a foreign international company unless the form is issued, circulated or distributed together with a prospectus a copy of which has been approved and registered by the Registrar, and any person who contravenes this section shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Invitations to public to lend money to or deposit money with an IBC or a foreign international company, Approval of Registrar. *[S 37/2003]*

24. (1) An invitation to the public to deposit money with or lend money to an IBC or a foreign international company shall not be issued, circulated or distributed by the company or by any other person unless a prospectus meeting the prescribed requirements in relation to the invitation has been approved and registered by the Registrar.

(2) For the purposes of this Division, an IBC or foreign international company which accepts or agrees to accept from any person any money on deposit or loan shall be deemed to make an invitation to the public to deposit money with or lend money to the company or proposed company.

(3) An IBC or a foreign international company is not required to issue a prospectus if it is not, at any one time, under a liability (whether or not such liability is present or future) to repay any money accepted by it on deposit or loan from more than 50 persons.

[S 37/2003]

(4) Nothing in this section shall apply to an exempted entity and nothing in this Order shall require a prospectus to be issued in connection with any invitation to the public to deposit money with an exempted company.

[S 37/2003]

(5) In this section, “exempted entity” means –

- (a) an IBC or a foreign international company in either case granted a licence under the International Banking Order, 2000; or
- (b) an IBC or a foreign international company or a registered agent which has been declared by the Authority by notice published in the *Gazette* to be an exempted company for the purposes of this section.

[S 37/2003]

(6) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine of one hundred and fifty thousand dollars or both.

Advertisements.

25. (1) No advertisement offering, or calling attention to an offer or intended offer of, shares in or debentures of an IBC or a foreign international company or proposed IBC to the public shall be published until it has been approved by the Registrar.

(2) Application for approval of an advertisement shall be lodged with the Registrar together with a copy of the advertisement.

(3) Any person who publishes or causes to be published an advertisement without the prior approval of the Registrar shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars.

Retention of over-subscriptions in debenture issues.

26. (1) An IBC or a foreign international company shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the company has specified in the prospectus –

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit on the amount of the over-subscription that may be accepted or retained.

(2) Where an IBC or a foreign international company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

Registration of prospectus.

27. (1) The Registrar shall not register a copy of any prospectus if it contains any statement or matter which is in his opinion misleading in the form and context in which it is included and unless –

- (a) a copy signed by every director and by every person who is named therein as a proposed director of the company or by his agent authorised in writing is lodged with the Registrar on or before the date of its issue;
- (b) the prospectus appears to comply with the requirements of this Order and the prescribed requirements; and

(c) there is lodged with the Registrar a copy of any consent required by section 29 to the issue of the prospectus and any material contract referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof, verified as prescribed.

(2) If a prospectus is issued without a copy thereof having been so registered, the IBC or foreign international company and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one hundred and fifty thousand dollars.

Document containing offer of shares to be deemed prospectus.

28. (1) Where an IBC allots or agrees to allot to any person any shares or debentures of the company with a view to all or any of them being offered for sale to the public, the offer to the public shall be made through a licensee under the Banking Act (Chapter 95), the International Banking Order, 2000 (S 53/00) or the Registered Agents and Trustees Licensing Order, 2000 (S 54/00), in the case of each such offer with the prior written approval of the Registrar, and any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all written laws and rules of law as to the contents of prospectuses and as to liability in respect of advertisements and statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability (if any) of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

[S 37/2003]

(2) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of an IBC.

[S 37/2003]

- (3) The document making the offer shall state –
- (a) the net amount of the consideration received or to be received by the IBC making the offer in respect of the shares or debentures to which the offer relates; and
 - (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.

[S 37/2003]

(4) Where an offer to which this section relates is made by an IBC, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the company by two directors of the company.

[S 37/2003]

Expert’s consent to issue of prospectus containing statement by him.

29. (1) A prospectus inviting subscription for or purchase of shares in or debentures of IBC or a foreign international company and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless he has given and has not, before the delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included and there appears in the prospectus a statement to that effect.

(2) If any prospectus is issued by an IBC or a foreign international company in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Civil liability for mis-statement in prospectus.

30. (1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any shares or debentures in an IBC or a foreign international company on the faith of a prospectus for any loss or damage sustained by reason of an untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material –

- (a) a director of the company at the time of issue of the prospectus;
- (b) any person who authorised or caused himself to be named and was named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) a promoter of the company; or
- (d) any person who authorised or caused the issue of the prospectus.

(2) Notwithstanding anything in subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture-holders, auditor, banker, barrister, advocate and solicitor or stock or share broker shall not for that reason alone be construed as an authorisation by such person for the issue of the prospectus.

- (3) No person shall be so liable if he proves –
- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
 - (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;
 - (c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that –
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;

- (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of an extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the expert making the statement was competent to make it and that that expert had given the consent required by section 29 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the person's knowledge, before any allotment or sale thereunder; and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 29, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 29, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves –

- (a) that, having given his consent under section 29 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;

- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable notice of the withdrawal and the reasons therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(6) Where –

- (a) a prospectus contains the name of a person as a director of an IBC or a FIC, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

[S 37/2003]

- (b) the consent of a person is required under section 29 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company except any without whose knowledge or consent the prospectus was issued, and any other person who authorised or caused the issue of the prospectus, shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Criminal liability for mis-statement in prospectus.

31. (1) Where in any prospectus, or in any advertisement of the kind referred to in section 25(1), there is an untrue statement or wilful non-disclosure, any person who authorised or caused the issue of the prospectus or advertisement shall be guilty of an offence against this Order unless he proves that the statement or non-disclosure was immaterial or that he had reasonable ground for believing and did, up to the time of the issue of the prospectus, believe

that the statement was true or that the non-disclosure was immaterial and shall be liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

(2) A person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert.

DIVISION 2 - RESTRICTIONS ON ALLOTMENT

International bank or trust company as agent in public offer.

32. (1) All moneys payable on application for the shares in an IBC shall be paid to the agent for the IBC, and pending receipt by the agent of the amount of the minimum subscription, it shall hold all moneys received by it upon trust for the applicant, and if the amount of the minimum subscription is not received by the agent within the time stated in the prospectus, the agent shall, subject to any right under the terms of the prospectus to deduct any costs and charges owing to it or to the Registrar in connection with the prospectus or the offer or his acting as a broker in the matter, return the application moneys or such proportion thereof as remains after making deductions (if any) in accordance with the terms of the prospectus to the applicants *pro rata* based on the respective amounts paid by them.

[S 37/2003]

(2) Upon receipt by an agent for an IBC of the amount of the minimum subscription on behalf of the company the agent shall, subject to its right to deduct from such moneys its proper remuneration and disbursement, hold such moneys and any further application moneys as agent for the company.

[S 37/2003]

Prohibition of allotment unless minimum subscription received.

33. (1) No allotment shall be made of any shares of an IBC offered to the public unless –

[S 37/2003]

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares so subscribed has been received by the company, but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be –

- (a) calculated on the nominal value of each share, and where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and
- (b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public shall not be less than five per cent of the nominal amount of the share or of the issue price, as the case may be.

(4) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(5) No IBC shall allot, and no officer or promoter of an IBC company or a proposed IBC shall authorise or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of four months from the issue of the prospectus, and any IBC or other person who contravenes this section shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Application moneys to be held in trust until allotment.

34. (1) Subject to sections 32(1) and (2) and section 33(1), all applications and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public by an IBC shall, until the allotment of such shares or debentures, be held upon trust for the applicant and such moneys shall be paid into and kept in a separate trust account, pending allotment, at a bank approved by the Registrar in writing.

[S 37/2003]

(2) If default is made in complying with this section, every officer of the company who is in default and who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Return of allotment.

35. (1) Where any IBC makes any allotment of its shares, the company shall, within one month thereafter, lodge with the Registrar a return of the allotment in the prescribed form stating –

- (a) the number of shares comprised in the allotment and the amount paid for such shares;
- (b) the date of the allotment;
- (c) the amount (if any) deemed to be paid, or due and payable, on the allotment of each share;
- (d) where the capital of the company is divided into shares of different classes, the class of shares to which each share in the allotment belongs.

(2) If default is made in complying with this section, a penalty of US\$50 shall be payable by the IBC.

[S 37/2003]

Application of Securities Order, 2001. [S 37/2003]

35A. This Part shall apply subject to the provisions of the Securities Order, 2001, (S 31/01) and all Regulations made thereunder and of any rules of an exchange made under section 8 of that Order.

DIVISION 3 - SHARE CAPITAL

Application of Division 3.

36. (1) Subject to subsections (2) and (3), this Part applies only to an IBC which has share capital (whether it is limited by shares or limited by guarantee).

(2) Sections 47 and 48 apply only to an IBC limited by guarantee, whether or not it has share capital.

(3) Section 49 applies to all IBCs.

Shares at disposal of directors.

37. Subject to any relevant modification, the unissued shares and treasury shares of an IBC shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the IBC may, by resolution of the directors, determine.

Consideration for shares.

38. (1) Subject to any relevant modification, each share in an IBC shall be issued for consideration in money or money's worth (including a promissory note or other written binding obligation to contribute money or other property); and every share in an IBC shall be in the nature of personal property.

(2) Subject to any relevant modification, shares in an IBC may be issued for such amount as may be determined from time to time by the directors, except that in the case of an IBC having shares with par value, the amount so determined shall be not less than that par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the IBC in respect of the issue shall be conclusive, unless a question of law is involved.

(3) A share issued by an IBC upon conversion of, or in exchange for, another share or other security in the IBC (“the original share or other security”) shall be treated for all purposes as having been issued for consideration equal to that received or deemed to have been received by the IBC in respect of the original share debt obligation or other security.

(4) Subject to any relevant modification, each share in a company incorporated under this Order may 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.

Payment for shares.

39. (1) No share in an IBC may be issued until consideration (as mentioned in subsection (1) of section 38) has been given in respect of the share and, when issued, the share shall be regarded as fully paid and non-assessable unless that consideration is or includes such a promissory note or other written binding obligation as is mentioned in that subsection (a “note or other obligation”); and, in that case, until it is actually paid, the amount of the consideration represented by the note or other obligation shall be regarded as an amount unpaid on the share.

(2) Where shares in an IBC are not fully paid at issue, the Memorandum or Articles or an agreement for the subscription for the shares may contain provision for the forfeiture of the shares in the event that the amount unpaid on the shares is not paid pursuant to the note or other obligation.

(3) Any such provision as is referred to in subsection (2) shall contain a requirement that written notice (a “default notice”) specifying a date for payment to be made shall be served on a member who defaults in making payment pursuant to the note or other obligation.

(4) A default notice shall name a further date (“the final date”), not earlier than fourteen days from the date of service of the default 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 final date, the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(5) Where a default notice has been served and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment of the amount unpaid, by resolution of the directors forfeit and cancel all or any of the shares to which the notice relates.

(6) An IBC is under no obligation to refund any moneys to a member whose shares have been cancelled pursuant to subsection (5); but the member shall be discharged from any further obligation to the IBC in respect of the cancelled shares.

Fractional shares.

40. Subject to any relevant modification, an IBC may issue fractions of a share and, unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share shall have 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.

Treatment of consideration for shares.

41. (1) Upon the issue by an IBC of a share with par value, the consideration for the share constitutes –

- (a) capital to the extent of the par value; and
- (b) surplus to the extent of any excess over par value.

(2) Subject to any relevant modification, upon the issue by an IBC of a share without par value, the consideration for the share constitutes –

- (a) capital to the extent designated by the directors; and
- (b) surplus to the extent of any excess over what is so designated.

(3) In making a designation for the purposes of subsection (2)(a) in relation to a preference share, the directors must designate as capital an amount which is not less than the preferred amount.

(4) Upon the disposal by an IBC of a treasury share, the consideration for the share shall be added to surplus.

Dividend of shares.

42. (1) A share issued by an IBC as dividend 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 distribution.

(3) In the case of a dividend of authorised but unissued shares without par value, such amount (if any) as may be designated by the directors shall be transferred from surplus to capital at the time of the distribution; but, if the share is a preference share preferred as to entitlement on a liquidation, the directors shall so designate an amount not less than the preferred amount.

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

Alteration of share capital.

43. (1) An IBC may, by resolution, alter the conditions of its Memorandum and Articles in any one or more of the following ways –

- (a) (i) increasing its share capital by the creation of new shares of such par value as it thinks expedient;
- (ii) increasing the number of its share having no-par value;
- (iii) where the IBC has existing shares with a par value, adding to its capital shares having no-par value;
- (iv) where the IBC has existing shares with no-par value, adding to its capital shares having a par value;
- (b) increasing its share capital constituted by shares of no-par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;
- (c) consolidating and dividing all or any of its share capital into shares of larger amounts than its existing shares or consolidating and reducing the number of issued no-par value shares;
- (d) increasing the number of its issued no-par value shares without an increase of its stated capital;
- (e) subdividing its shares or any of them into shares of smaller amounts than is fixed by the Memorandum and Articles provided always that in the subdivision the proportion between the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the redeemed share is derived;
- (f) converting all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no-par value, subject to the provisions of this Order:

Provided that an existing company may not so convert any share capital which is not fully paid up;

- (g) converting its stated capital constituted either by ordinary or preference shares of no-par value into share capital consisting of shares having a par value, subject to the provisions of this Order;

- (h) cancelling shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any persons or which have been forfeited and diminishing the amount of the share capital by the amount of the shares so cancelled; and
- (i) redenominating the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency and such redenomination of the currency of any shares shall be deemed not to effect a cancellation of the existing shares and the issue of fresh shares.

(2) A cancellation of shares under subsection (1)(h) shall not be deemed to be a reduction of share capital within the meaning of this Order.

(3) Subject to filing notice thereof with the Registrar in the prescribed form, an IBC may, if so authorised by its Articles by a 75 per cent resolution, reduce its share capital in any way and, in particular, without limiting the generality of the foregoing may –

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up capital which is lost or unrepresented by available assets;
- (c) either with or without extinguishing or reducing liability on any of its shares repay any paid up share capital which is in excess of the needs of the company or which it is otherwise in the interests of the company as a whole to have paid off,

and may, so far as necessary, alter its Memorandum by reducing the amount of its share capital and of its shares accordingly.

(4) Where the proposed reduction of share capital involves limitation of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital –

- (a) every creditor of the IBC who is entitled to any debt or claim which on the commencement of the winding-up of the company would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the directors may by statutory declaration certify that there are no such creditors, but otherwise shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and the amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered;
- (c) where a creditor entered on the list whose debt is not discharged or whose claim has not been determined does not consent to the reduction, the directors may dispense with the consent of that creditor on the IBC securing payment of his debt or claim by appropriating as the Registrar on the application of an IBC directs –
 - (i) if the company admits the full amount of the debt or claim or although not admitting it is willing to provide for it, the full amount of the debt or claim; or
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Registrar.

(5) Notwithstanding the provisions of subsection (4), the Registrar may, on the application of an IBC having regard to the circumstances of the case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.

(6) All applications to the Registrar under the provisions of subsections (4) and (5) shall be lodged with the Registrar and the IBC making such application shall bear the costs of any enquiry and advertisement directed by the Registrar under the provisions of those subsections. The reduction of capital shall not become effective until any directions sought are certified by the Registrar as having been discharged.

(7) Any director or officer of any IBC who –

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
- (b) wilfully misrepresents the nature or the amount of the debt or claim of any creditor; or
- (c) wilfully is a party to any such concealment or misrepresentation,

shall be guilty of an offence against this Order and shall be personally liable for the amount of such debt or claim.

(8) An IBC shall, in the applicable prescribed form, file with the Registrar a notice of any increase or resolution approving a reduction in its authorised capital, within fourteen days of such increase or resolution approving a reduction being effected.

(9) Where a reduction of capital requires an application under subsection (4) or (5), it shall not become effective until its Registrar issues the certificate in the prescribed form confirming the reduction.

Issue of share certificates.

44. (1) An IBC may state in its Articles whether or not certificates will be issued in respect of shares.

(2) If an IBC issues certificates in respect of its shares, the certificates may be signed by two directors or by one director and a secretary, or be under the common seal of the IBC, with the signature of a director or secretary of the IBC, 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 IBC is *prima facie* evidence of the title of the member to the specified share.

Validation of shares improperly issued.

45. Where an IBC has purported to issue or allot shares and the issue or allotment of those shares was invalid by reason of any provision of this Order or of the Memorandum or Articles of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Registrar may, upon application lodged with him by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both subject to such conditions, if any, as it may impose and upon such order being made and a copy thereof being lodged by the company or by such holder, mortgagee or creditor with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of issue or allotment thereof as varied by the conditions, if any, imposed by the Registrar.

Share register.

46. (1) An IBC having a share capital shall cause to be kept one or more registers containing –

- (a) the names and addresses of the persons who hold registered shares in the IBC;
- (b) the number of each class and series of registered shares held by each such person;
- (c) the date on which any person became a holder of registered shares in the IBC;
- (d) the date on which any person ceased to be a holder of registered shares;
- (e) the identifying number of any certificate;
- (f) the date of issue of any certificate,

but the IBC may delete from the register information relating to persons who no longer hold shares.

(2) A share register may be in any such form as the directors may approve but, if it is in a form which cannot be read by the human eye, the IBC must be able to produce legible evidence of its contents.

(3) A copy of the share register or, if more than one, of each of them, commencing from the date of the registration of the IBC shall be kept at the registered office of the IBC.

(4) A share register shall be *prima facie* evidence of any matters directed or authorised by this Order to be contained in it.

(5) An IBC which wilfully contravenes any provision of this section is guilty of an offence and liable on conviction to a fine not exceeding two hundred dollars and to a further fine not exceeding fifty dollars for every day on which the contravention continues after conviction.

Register of members.

47. (1) An IBC which is limited by guarantee shall cause to be kept one or more registers containing –

- (a) the names and addresses of all persons who are, or have since the registration of the IBC been, members of the IBC;
- (b) the amount which each such person has undertaken to contribute to the IBC's assets as mentioned in section 5(3)(b);

[S 37/2003]

- (c) the date upon which each such person was registered as a member and, where applicable, the date on which he ceased to be a member.

(2) A register of members of an IBC limited by guarantee may be in such form as the directors approve but, if it is in a form which cannot be read by the human eye, the IBC must be able to produce legible evidence of its contents.

(3) A copy of the register of members or, if more than one, of each of them, commencing from the date of the registration of the IBC shall be kept at the registered office of the IBC.

(4) Nothing in this section affects the obligation of an IBC limited by guarantee which has a share capital to comply also with section 46.

(5) A register of members shall be *prima facie* evidence of any matters directed or authorised by this Order to be contained in it.

(6) An IBC which wilfully contravenes any provision of this section is guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred dollars and to a further fine not exceeding fifty dollars for every day on which the contravention continues after conviction.

Cessation of membership.

48. (1) A person shall not cease to be a member of an IBC limited by guarantee –

- (a) except by retirement in accordance with such formalities as may be specified in the Articles or, where no such formalities are so specified, by notice in writing addressed to the directors; and
- (b) if the IBC has a share capital and the member holds shares in the IBC, except upon the transfer of his shares.

(2) In the case of the death of a member, a notice under subsection (1)(a) may be given by his personal representative and, in the case of a member's incapacity, by the person managing his affairs.

(3) For the purposes of subsection (2), what amounts to incapacity on the part of a member of an IBC is a matter to be determined by the Court after having regard to all the relevant evidence and the circumstances of the case.

Rectification of share register or register of members.

49. (1) If, in the case of an IBC –

- (a) information which is required to be entered in a share register in accordance with section 46 or in a register of members in accordance with section 47 is omitted from the register or inaccurately recorded in it; or
- (b) there is unreasonable delay in entering any information in a share register or a register of members,

a member of the IBC, or any person aggrieved by the omission, inaccuracy or delay, may apply to the Registrar for an order that the register in question be rectified.

(2) On an application under subsection (1), the Registrar may order rectification of the register or refuse the application and, according as the Registrar thinks fit, the Registrar may make an order for costs to be paid by the applicant or the IBC.

(3) The Registrar 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 or, as the case may be, the register of members, whether the question arises between –

- (a) two or more members or alleged members of the IBC; or
- (b) between members or alleged members and the IBC,

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

(4) Any matter requiring the decision of the Registrar under this section may be referred by the Registrar or a party to the Court.

Transfer of shares.

50. (1) Subject to any relevant modification, shares of an IBC may be transferred by a written instrument of transfer signed by or on behalf of both the transferor and the transferee of the transfer and containing the name and address of the transferee and the date, provided that before a transfer of shares may be registered the resident secretary appointed under section 64(1) shall ensure that a certificate of due diligence in the prescribed form is completed and presented to the directors approving the share transfer.

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

(3) An IBC need not treat a transferee of a registered share as a member of the IBC until his name has been entered in the share register but, subject to any relevant modification, on the application of the transferor and the transferee of a registered share, the IBC must enter the name of the transferee in its share register.

Transfer of shares, death, bankruptcy.

51. (1) In a case where –

- (a) a member of an IBC dies or becomes bankrupt;
- (b) on account of any incapacity of a member of an IBC, his affairs are managed by another person (“the guardian”); or
- (c) by operation of law, the registered shares of a member of an IBC are transferred to another person (“the successor”),

the IBC shall accept a transfer of the member’s registered shares by his personal representative or trustee in bankruptcy or by the guardian or successor, as the case may be, as if the person making the transfer were the registered holder of the shares at the time of the execution of the transfer.

(2) For the purposes of subsection (1), what amounts to incapacity on the part of a member of an IBC is a matter to be determined by the Court after having regard to all the relevant evidence and the circumstances of the case.

Protection on seizure of shares.

52. (1) If, in pursuance or purported pursuance of legislative or similar authority outside Brunei Darussalam, a government or other body –

- (a) by or in connection with a nationalisation, 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 or similar charge,

takes or seizes any securities or other interest in an IBC, the IBC itself or a person holding securities or any other interest in the IBC (including an interest as creditor), may apply to the Court for an order that the IBC disregard the taking or seizure and continue to treat the person who, but for the taking or seizure, would have held the securities or other interest as continuing to hold them.

(2) Without prejudice to subsection (1), where a person whose securities or other interests have been taken or seized as mentioned in that subsection is other than a natural person, the applicant under subsection (1) or (if it is not the applicant) the IBC may apply to the Court for an additional order for the IBC to treat the persons believed by the IBC to have held the direct or indirect beneficial interest in the securities or other interests as the holder of them.

(3) On an application under subsection (1) or (2), the Court may grant such relief as it considers equitable and proper; and, if the Court thinks it appropriate, that relief may include the making of an order that the securities or other interests in the IBC vest in such trustees as the Court may appoint upon such trusts and for such purposes as the Court may determine.

Provision of financial assistance.

53. (1) If the Articles specifically so provide and subject to any relevant modification an IBC may provide financial assistance, whether directly or indirectly, and whether by way of loan, guarantee, or otherwise, for the purpose of, or in connection with, the purchase or subscription of its own shares, the shares of any subsidiary or of any holding company.

(2) No such assistance permitted under subsection (1) may be made unless the directors, following due enquiry made by them, determine by resolution containing details of the assistance to be given, the reasons therefor and the names of the assisted parties that, immediately after the purchase, redemption or other acquisition, the following conditions (in this Part referred to as “the solvency conditions”) will be fulfilled –

- (a) the IBC will be able to satisfy its liabilities as they become due in the ordinary course of its business and the realisable value of the assets of the IBC will not be less than the sum of its total liabilities, as shown in the books of account and its capital; or
- (b) all the creditors of the company have in each case consented in writing to the giving of such assistance,

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the IBC is conclusive for this purpose, except in so far as a question of law may be involved.

(3) If this section is not complied with every officer of the IBC in default is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

(4) Where –

- (a) any person is convicted of an offence under this section; and
- (b) the Court is satisfied that the IBC has suffered loss or damage as a result of the act or omission that continues the offence,

the Court may, in addition to imposing a penalty, order the convicted person to pay compensation to the IBC of such amount as the Court specifies.

Purchase of own shares.

54. (1) Subject to any relevant modification, an IBC may purchase, redeem or otherwise acquire and hold its own shares, either by using surplus or in exchange for newly issued shares of equal value.

(2) Subject to subsection (1), an IBC may not purchase, redeem or otherwise acquire its own shares without the consent of the member who holds the shares unless the IBC is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of –

- (a) the provisions of the Memorandum or Articles;
- (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or

(c) the subscription agreement for the shares.

(3) Subject to subsection (4), no purchase, redemption or other acquisition permitted under subsection (1) may be made unless the directors, following due enquiry made by them, determine that, immediately after the purchase, redemption or other acquisition, the solvency conditions will be fulfilled, and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the IBC is conclusive for this purpose, except in so far as a question of law may be involved.

(4) A determination by the directors under subsection (3) shall not be 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 in the IBC;
- (b) by virtue of such a transfer of capital as is referred to in section 56(1)(b);
- (c) by virtue of the provisions of section 130; or
- (d) pursuant to an order of the Court.

(5) Subject to any relevant modification, shares that an IBC purchases, redeems or otherwise acquires may be cancelled or held as treasury shares, except that, if the purchase, redemption or other acquisition would (apart from this subsection) result in a reduction in capital in a manner that would be a contravention of the requirements of section 56(2), the shares shall be cancelled but available for reissue.

(6) Upon the cancellation of a share under subsection (5), the capital of the IBC shall be reduced by the amount included with respect to that share.

(7) Subject to this Order, an IBC may purchase, redeem or otherwise acquire its own shares at a price lower than fair value if permitted by, and then only in accordance with –

- (a) the Memorandum or Articles; or
- (b) a term of the subscription agreement relating to the purchase, redemption or other acquisition of the shares.

Treasury shares held - rights suspended.

55. Where shares in an IBC are held by the IBC as treasury shares, such shares of the IBC are not entitled to vote or to have dividends paid thereon and, except for the purposes of determining the capital of the IBC, shall not be regarded as outstanding for any purpose under this Order.

Alteration of capital/surplus.

56. (1) Subject to any relevant modification and to subsections (2) and (3), by a resolution of the members the capital of an IBC may be –

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

(2) In the case of an IBC limited by shares, no reduction of capital shall be effected that reduces the capital of the IBC to an amount which, as the case may require –

- (a) is less than the aggregate par value of all shares with par value which are either outstanding or held as treasury shares; or
- (b) is less than the aggregate of the amounts designated as capital of all shares without par value which are either outstanding or preference shares held by the IBC as treasury shares.

(3) No reduction of capital shall be effected under subsection (1) unless the directors determine that, immediately after the reduction, the solvency conditions will be fulfilled.

Dividend may be declared.

57. (1) Subject to any relevant modification, pursuant to a resolution of directors, an IBC may declare and pay out of surplus a dividend in money, in shares or other property.

(2) No dividend may be declared and paid unless the directors determine that, immediately after the payment of the dividend, the solvency conditions will be fulfilled.

Surplus may reflect unrealised appreciation.

58. Subject to any relevant modification, by a resolution of its directors, an IBC may include in the computation of surplus for any purpose under this Order the net unrealised appreciation of its assets; and, in the absence of fraud, the decision of the directors as to the value of the IBC's assets is conclusive for this purpose, except in so far as a question of law may be involved.

DIVISION 4 - DEBENTURES

Power to issue debentures.

59. (1) Subject to any relevant modification and to this Order, an IBC shall have power to issue debentures on such terms and conditions as it thinks fit and in particular but without limiting the generality of the foregoing may issue debentures –

- (a) constituting a charge on any or all the assets of the IBC;
- (b) convertible from debentures into shares in the IBC.

(2) The debt payable under any debenture whether sealed or signed on behalf of the company shall be a specialty debt of the IBC and where issued by a branch shall be located at that branch.

(3) Subject to the provisions of this section every IBC which issues debentures shall keep and maintain –

- (a) a register of debentures at the registered office of the IBC in Brunei Darussalam;
- (b) a copy of all the terms of Debentures issued by the IBC with the register of holders of debentures at that registered office.

(4) An IBC may cause to be kept in any place outside Brunei Darussalam a branch register of debentures, and branch register of an IBC shall be kept in the same manner in which the principal register is required to be kept.

PART VI
REGISTERED OFFICE AND AGENT

Registered office.

60. (1) An IBC shall at all times have a registered office in Brunei Darussalam which shall be maintained there either by the IBC if it has a physical presence in Brunei Darussalam, or in all other cases by its registered agent.

(2) Notice of the situation of the registered office shall be given by an IBC to the Registrar at the time of incorporation, and notice of any change shall likewise be given within fourteen days of such change, in the prescribed form.

(3) An IBC which wilfully contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars and to a further fine not exceeding fifty dollars for every day on which the contravention continues after conviction.

Registered agent.

61. (1) An IBC shall at all times have a registered agent in Brunei Darussalam.

(2) No person may be an IBC's registered agent unless licensed as such under the Registered Agents and Trustees Licensing Order, 2000.

(3) An IBC or its registered agent shall display at their principal office in Brunei Darussalam in readily visible form the names of such IBCs as have their registered office at their address.

(4) An IBC which wilfully contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars and to a further fine not exceeding fifty dollars for every day on which the contravention continues after conviction.

Requirements to change IBC's registered agent.

62. (1) The provisions of this section apply where the registered agent of an IBC wishes to cease to be its registered agent and the agent is unable to reach agreement with the IBC for which he is the registered agent concerning his replacement.

(2) The registered agent of the IBC shall give a notice (a "notice of change") to any director or officer of the IBC at the director's or officer's last known address or, if the registered agent is not aware of the name or the address of such a director or officer, to the person from whom the registered agent last received instructions concerning the IBC, specifying his wish to resign as registered agent with effect from a date not less than ninety days from the date of the notice of change.

(3) Together with a notice of change the registered agent shall supply a list of all registered agents in Brunei Darussalam with their names and addresses.

(4) The registered agent shall send to the Registrar a copy of the notice of change and of the list supplied under subsection (3).

(5) If, by the date specified in a notice of change, the IBC has not adopted a resolution to amend its Memorandum so as to change its registered agent, the agent shall so inform the Registrar who shall forthwith publish in the *Gazette* a notice that the IBC will be struck off the register unless, within thirty days of the publication of the notice, the IBC registers with the Registrar a copy of a resolution amending the Memorandum so as to change its registered agent.

(6) If, within the period of thirty days specified in a notice under subsection (5), the IBC fails to register with the Registrar a copy of a resolution amending the Memorandum so as to change its registered agent, the Registrar may strike the IBC off the Register and publish in the *Gazette* a notice that the IBC has been struck off the Register.

(7) In any case where –

- (a) the licence of a registered agent has been revoked under the Registered Agents and Trustees Licensing Order, 2000; or
- (b) a registered agent fails to renew his licence,

then, for the purpose of changing the registered agent of any IBC for which he was formerly the registered agent, the Registrar shall serve notice on every such IBC stating what has occurred and specifying a date not less than ninety days after the date of the notice by which the IBC is required to replace the former registered agent.

(8) Where notice is served under subsection (7), the provisions of subsections (3) to (6) shall have effect with any necessary modifications as if that notice were a notice of change and the obligations of the registered agent under those subsections were obligations of the person authorised by the Authority.

[S 103/2010]

(9) An IBC that has been struck off the Register under subsection (6) shall remain liable for all its debts, liabilities and other obligations; and the striking off shall not affect any liability of any of its members, directors, officers or agents.

PART VII

DIRECTORS, SECRETARY, OFFICERS

Election, term and removal of directors.

63. (1) Every IBC shall have at least one person acting as a director and the first directors of an IBC shall be appointed by the registered agent named in the Memorandum; and, thereafter, the directors shall be elected by the members for such term as the members may

determine and, where the Memorandum or Articles so permit, the directors may also elect directors for such term as the directors may determine.

(2) A person shall not be appointed or named as a director unless he has, by himself or by his agent authorised in writing for the purpose, signed a consent to act as a director.

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

(4) Subject to any relevant modification –

(a) a director may be removed from office by a resolution of members or by a resolution of a three-quarters majority of directors entitled to receive notice of directors meeting and to vote; and

(b) a director may resign his office by giving written notice of his resignation to the IBC,

and a resignation has effect from the date the notice is received by the IBC or from such later date as may be specified in the notice.

(5) Subject to any relevant modification, a vacancy on the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

Appointment of secretary.

64. (1) The directors of every IBC shall appoint one or more secretaries at least one of whom shall be a resident secretary. Subject to subsection (2) and any relevant modification, a secretary of an IBC may be a corporation and such corporation may act by itself or through a nominee appointed in writing and may be appointed or may act as a secretary of more than one company.

(2) No person, other than an officer of a registered agent or a wholly-owned subsidiary authorised under section 3(3) of the Registered Agents and Trustees Licensing Order, 2000, shall act or be appointed as a resident secretary.

[S 37/2003]

(3) The resident secretary of an IBC shall be responsible for the compliance by the company with the requirements of this Order, provided that the resident secretary shall not be liable as an officer of the company to any penalty or damages save for anything done or omitted to be done by him in carrying out the duties of his office otherwise than by reason of his wilful misconduct, willful default or wilful neglect.

Management by directors.

65. (1) Subject to any relevant modification, the business and affairs of an IBC shall be managed by a board of directors consisting of one or more persons who may be individuals or bodies corporate, and subject to any relevant modification, no director or resident director shall be required to hold any shares in a company.

(2) A registered agent shall, when requested in writing by an IBC so to do, make available an officer or wholly-owned subsidiary duly authorised under section 3(3) of the Registered Agents and Trustees Licensing Order, 2000 for appointment as a resident director of an IBC.

(3) No person shall act or be appointed as a resident director of an international company other than an officer or subsidiary of a registered agent made available for appointment by the registered agent pursuant to subsection (1).

(4) A resident director shall be entitled to vote upon the resolution of the board of directors without disclosing his interest as director of any other international company.

(5) A director or resident director or secretary or resident secretary of an IBC shall not disclose or use information he has obtained by reason of his office to any person or for any purpose except in accordance with his duty as a director or secretary of the company and so far as he may be compelled by law so to do. A director or resident director may without incurring liability disclose in confidence to the Authority only information coming to his knowledge which he honestly believes suggests that a breach of any written law of Brunei Darussalam

relating to drug-trafficking or money-laundering is being or is likely to be practiced by the company or by any of its members or directors or upon the company or any of its members.

(6) The fees of a resident director or resident secretary payable by an IBC shall be paid to the registered agent which made available the officer or subsidiary for appointment in such manner and at such times as shall be agreed between the registered agent and the IBC.

Number of directors.

66. The number of directors shall be fixed by the Articles and, subject to any relevant modification, the Articles may be amended to change the number of directors.

Register of directors and secretaries.

67. (1) An IBC shall keep a register of directors and secretaries (in this section, “the register”) containing –

- (a) the names, occupations and residential addresses of the persons who are or have at any time been directors or secretaries of the IBC;
- (b) the date on which each such person was appointed as a director or secretary of the IBC;
- (c) the date on which any person who was named as a director or secretary ceased to be such.

(2) The register shall be in such form as the directors may approve but, if it is in a form which cannot be read by the human eye, the IBC must be able to produce legible evidence of its contents.

(3) A copy of the register, commencing from the date of the registration of the IBC shall be kept at the IBC’s registered office.

(4) The register shall be *prima facie* evidence of any matters directed or authorised by this Order to be contained in it.

(5) An IBC which wilfully contravenes any provision of this section is guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty dollars and to a further fine not exceeding fifty dollars for every day on which the contravention continues after conviction.

Powers of directors.

68. Except in so far as powers are reserved to the members under this Order or by the Memorandum or Articles, the directors have all the powers of the IBC.

Emoluments of directors.

69. Subject to any relevant modification, the directors may, by a resolution of the directors, fix their emoluments in respect of services to be rendered to the IBC in any capacity.

Committees of directors.

70. (1) By a resolution of the directors, the directors may designate one or more committees, each consisting of one or more directors.

(2) Subject to any relevant modification and to subsection (3), each committee has such powers and authority of the directors, including the power and authority to execute and complete any document as the agent of the IBC or to affix the common seal (if any) of the IBC, as are specified in the resolution of the directors designating the committee.

(3) No committee has any power or authority with respect to the matters requiring a resolution of directors under sections 53, 54 or 63.

Meetings of directors.

71. (1) Subject to any relevant modification, the directors of an IBC may meet at such times, in such manner and at such places, within or outside Brunei Darussalam as the directors may determine to be necessary or desirable.

(2) A director shall be regarded as present at a meeting of directors if –

- (a) he participates by telephone, video-conferencing or other electronic means; and
- (b) all the directors participating in the meeting are able to hear each other.

Notice of meetings of directors.

72. (1) Subject to any relevant modification providing for longer notice, not less than three days notice of a meeting of directors shall be given to each director.

(2) Notwithstanding subsection (1), but subject to any relevant modification, a meeting of directors held in contravention of that subsection shall be valid if all of the directors, or such majority of them as may be specified in the Memorandum or Articles, who are entitled to vote at the meeting have waived the notice of the meeting; and, for this purpose, the presence of a director at a meeting shall be deemed to constitute waiver on his part.

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

Quorum for meetings of directors.

73. The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if, at the commencement of the meeting, at least one half of the total number of directors is present in person or by alternate.

Consent of directors.

74. Subject to any relevant modification, any action that may be taken by the directors 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.

75. (1) Subject to any relevant modification, a director may by a written instrument appoint an alternate who need not be a director.

(2) An alternate appointed under subsection (1) shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in place of the director.

Officers and agents.

[S 37/2003]

76. (1) By a resolution of the directors, the directors may appoint any person, including a person who is a director, to be an officer or agent of the IBC.

(2) Subject to subsection (3) and to any relevant modification, each officer or agent has the authority of the directors, including the power and authority to execute and complete any document as the agent of the IBC or to affix the common seal of the IBC (if any), as set out in the Articles or in the resolution of directors appointing him.

(3) No officer or agent has any power or authority with respect to any matter which, under this Order, requires a resolution of directors.

(4) The resolution of directors appointing any person to be an agent of the IBC may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent in accordance with this section.

(5) The directors may, by resolution, remove an officer or agent appointed under subsection (1) or revoke or vary a power conferred on him in accordance with this section.

Standard of care.

77. (1) In performing his functions, every director, officer, agent or liquidator of an IBC shall act honestly and in good faith with a view to the best interests of the IBC 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 an IBC or in any agreement entered into by the IBC relieves a director, officer, agent or liquidator of the IBC from the duty to act in accordance with the Memorandum and Articles or from any personal liability arising from the management of the business and affairs of the IBC.

Reliance on records and reports.

78. In performing his functions, every director, officer, agent or liquidator of an IBC is entitled to rely on the share register, register of members and the books of account and records and the minutes and copies of consents to resolutions kept under this Order and any report made to the IBC by any other director, officer, agent or liquidator or by any person selected by the IBC to make the report.

Conflict of interests.

79. (1) Subject to any relevant modification and to section 65(4), no agreement or transaction between an IBC and –

- (a) one or more of its directors or liquidators; or
- (b) 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 person,

is void or voidable by reason only that it is such an agreement or transaction or by reason only that the director or liquidator is present at the meeting (whether of directors or liquidators or a committee of directors or liquidators) that approves the agreement or transaction or that the vote of consent of the director or liquidator is counted for that purpose.

(2) Subject to any relevant modification, an agreement or transaction falling within 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 the other party to the agreement or transaction are disclosed in good faith and 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 which has been approved –

- (i) either without counting the vote or consent of any interested director or liquidator; or
- (ii) if the votes or consents of all disinterested directors or liquidators are insufficient to approve a resolution of the directors or liquidators, then by the unanimous votes or consents of all disinterested directors or liquidators.

(3) Subject to any relevant modification, an agreement or transaction falling within 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 the other party to the agreement or transaction are disclosed in good faith and 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 relevant modification, an agreement or transaction falling within subsection (1) is valid unless it is shown that, at the time the agreement or transaction was authorised, approved or ratified by resolution of directors or members, the agreement or transaction was unfairly prejudicial to one or more members of the IBC or to its creditors; but no person who voted in favour of that resolution shall be entitled subsequently to impugn or object to the agreement or transaction.

(5) Subject to any relevant modification, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for the purposes of determining whether the meeting is duly constituted in accordance with section 73 or otherwise.

Indemnification of directors and officers.

80. (1) Subject to subsection (2) and to any relevant modification, an IBC may indemnify against all expenses, including legal fees, against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who –

- (a) is or was a party or is threatened to be made a party to any pending, threatened or completed proceedings, whether civil, criminal, administrative or investigative by reason that the person is or was a director, officer or liquidator of the IBC; or
- (b) is or was, at the request of the IBC, 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) applies to such a person as is referred to in that subsection only if he acted honestly and in good faith with a view to the best interests of the IBC and, in the case of criminal proceedings, if he had no reasonable cause to believe that his conduct was unlawful.

(3) Unless a question of law is involved, the decision of the directors as to whether a person acted honestly and in good faith and with a view to the best interests of the IBC, and as to whether a person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this section.

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

(5) If any such person as is referred to in subsection (1) is successful in defence of any proceedings referred to in that subsection, he shall be entitled to be indemnified against all expenses, including legal fees, and all judgments, fines and amounts paid in settlement and reasonably incurred by him in connection with the proceedings.

Insurance.

81. An IBC may purchase and maintain insurance in relation to any person who is or was a director, officer or liquidator of the IBC or who, at the request of the IBC, 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 that person and incurred by him in that capacity, whether or not the IBC has or would have had power under section 80 to indemnify that person against the liability.

PART VIII
PROTECTION OF MEMBERS AND CREDITORS

Meetings of members.

82. (1) Subject to any relevant modification, the directors of an IBC may convene meetings of the members of the IBC at such times, in such manner and at such places, within or outside Brunei Darussalam, as the directors consider necessary or desirable.

(2) Subject to any provision in the Memorandum or Articles for a lesser percentage, upon the written request to the IBC of members holding more than fifty per cent of the votes, or in the case of a company limited by shares of the votes, of the outstanding shares in the IBC, the directors shall convene a meeting of members to be held within thirty days of the receipt of such a request.

(3) Subject to any relevant modification, a member shall be deemed to be present at a meeting of members if –

- (a) he participates by telephone video-conferencing facility 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 provisions 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 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.

Notice of meeting of members.

83. (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 or, as the case may be, the register of members and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), and subject to any relevant modification, a meeting of members held in contravention of the requirement to give notice is valid if the requirement of notice is waived by –

- (a) members holding a ninety per cent majority, or such lesser majority as may be specified in the Memorandum or Articles, of the total number of votes, or in the case of a company limited by shares, of the shares entitled to vote on all the matters to be considered at the meeting; or
- (b) members holding a ninety per cent majority, or such lesser majority as may be specified in the Memorandum or Articles, of the votes of each class or series of shares whose members are entitled to vote thereon as a class or series, together with an absolute majority of the remaining votes,

and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

(3) Neither the inadvertent failure of the directors to give notice of a meeting to a member nor the fact that a member may not have received such a notice shall invalidate the meeting.

Quorum for meetings of members.

84. The quorum for a meeting of members for the purposes of a resolution of members is that fixed by the Memorandum or Articles but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if, at the commencement of the meeting, there are present, in person or by proxy, at least –

- (a) one-half of the votes of each class or series whose members are entitled to vote on the resolution as a class or series; and
- (b) one-half of the votes of the remaining shares entitled to vote thereon.

Voting by members.

85. (1) Except as otherwise provided in the Memorandum or Articles, or in the terms of issue of any shares or class of share all shares vote as one class and each whole share has one vote.

(2) The directors of an IBC may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

Voting trusts.

86. (1) One or more members of an IBC may transfer registered shares to, any person authorised to act as trustee for the purpose of vesting in that person, who may be designated as (and is in this Part referred to as) a voting trustee, the right to exercise the votes of those shares.

(2) The following provisions apply where a person is designated as voting trustee under subsection (1) –

- (a) the period for which the trustee may vote shall not exceed ten years;
- (b) subject to paragraph (a), the agreement may contain any other provisions not inconsistent with the purpose of the agreement; and
- (c) a copy of the agreement shall be filed at the registered office of the IBC and shall be open to inspection by beneficiaries of the trust during business hours and by other persons in accordance with section 106.

(3) Where certificates for registered shares have been issued for shares which are to be transferred to a voting trustee pursuant to this section –

- (a) new certificates shall be issued to the voting trustee to represent the shares so transferred;
- (b) the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled.

(4) Where a share certificate is issued to a voting trustee, an endorsement shall be made on a certificate issued to a voting trustee that, the shares represented by the certificate are held by the person named therein pursuant to the agreement.

(5) Where an agreement has been made under this section, there shall be noted in the share register of the IBC, against the record of the shares held by the voting trustee, the fact that the agreement exists.

(6) During the period specified in the agreement, the voting trustee may vote the shares issued or transferred; and shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except so far as he may be liable for his own conduct or acts.

(7) Where, by an agreement under this section, two or more persons are designated as voting trustees, and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement –

- (a) the right and manner of voting shall be determined by a majority of the trustees; or
- (b) if the trustees are equally divided as to the right and manner of voting in any particular case, the votes of the shares in that case shall be divided equally among the trustees.

Extension of voting trust.

87. (1) At any time prior to the time of expiry of an agreement under section 86 (“a voting trust agreement”) as originally fixed or as last extended as provided in this section, one or more of the beneficiaries of the trust may, by written agreement (an “extension agreement”) and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding ten years from the date on which it would otherwise expire.

(2) Prior to the time of expiry of a voting trust agreement, whether as originally fixed or as last extended, as the case may be, the voting trustee shall file at the registered office of the IBC a copy of the extension agreement and of his written consent thereto; and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no extension agreement shall affect the rights or obligations of persons who are not party thereto.

Mutual voting agreement.

88. (1) Two or more members of an IBC may by agreement in writing provide that in exercising any voting rights, the shares held by them shall be voted –

- (a) as provided in the agreement;
- (b) as the parties to the agreement may agree; or
- (c) as determined in accordance with such procedure as they may agree upon.

(2) Where an agreement has been made under this section, the IBC to whose shares it relates shall not be required to take any account of the agreement unless a copy of the agreement is filed at the registered office of the IBC; and, where such a copy is so filed, it shall be open to inspection by the parties to the agreement during business hours and by other persons in accordance with section 106.

(3) No agreement made under this section shall be effective for a period of more than ten years from the date it is made; but, at any time within the two years immediately preceding the date of the expiry of the agreement, the parties may extend its duration for such additional period, not exceeding ten years at any one time, as they wish.

(4) Where an agreement is extended under subsection (3), subsection (2) shall apply in relation to the extension agreement as it applies in relation to the original agreement.

General provisions as to voting trusts and agreements.

89. (1) The validity of any agreement under sections 86 or 88 shall not be affected during a period of ten years from the date it was created or last extended by reason only of the fact that, under its terms it will or may last beyond a period of ten years.

(2) Nothing in sections 86 to 88 shall be deemed to invalidate any voting or other agreement among the members of an IBC or any irrevocable proxy that is not otherwise illegal.

Consent of members.

90. Subject to any relevant modification, any 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 notices, etc., on members.

91. Any notice, information or written statement required under this Order to be given or served by an IBC to or on members must be given or served in the manner prescribed by the Memorandum or Articles, as the case may be; and in the absence of a provision in the Memorandum or Articles, by personal service or by post addressed to each member at the address shown in the share register.

Service, etc., of documents on IBC.

92. (1) Any summons, notice, document, process, request, information or written statement to be served on or made or given to an IBC may be served, given or made by leaving it, or by sending it by registered mail to the IBC, at its registered office or by leaving it with, or by sending it by registered mail to, the IBC's registered agent.

(2) Service or delivery of any summons, notice, order, document, process, request, information or written statement to be served on or made or given to an IBC may be proved by showing that the summons, notice, order, document, process, request, 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 specified for service; and

(b) was correctly addressed,

and that the postage was prepaid.

PART IX

DIVISION 1 - ACCOUNTS AND AUDIT

Accounts to be kept. [S 37/2003; S 75/2013]

93. (1) A DCC, FIC and an IBC shall cause to be kept proper accounting and other records as will sufficiently explain the transaction and financial position of the company.

(2) The accounts of a DCC, FIC and an IBC shall be kept at its registered office in Brunei Darussalam and shall at all times be open to inspection by any director.

(3) The directors shall, within 18 months from the date of the incorporation, registration, conversion or reconstitution of a DCC, FIC and IBC and subsequently once every calendar year, lay before the company in general meeting, the financial statements of the company for the period –

(a) in the case of the first accounts, since the incorporation, registration, conversion or reconstitution of the company; and

(b) in any other case, since the preceding accounts and made up to the date at least 6 months prior to the meeting.

(4) A DCC, FIC and an IBC shall retain all accounting records for at least 7 years, from the date of completion of the transactions to which they relate.

Statements of accounts.

94. The accounts of an international company may be prepared in accordance with such generally accepted accounting principles as may be directed by the members in general meeting or as may be provided for in the articles, or, in the absence of such direction or provision, as may be determined by the directors.

Auditor to be appointed.

95. (1) Subject to section 96, the directors or the members of an IBC shall within ninety days of its incorporation, appoint an approved auditor to be the auditor of that company and that auditor shall hold office until the expiration of his appointment or earlier termination by resolution of members.

(2) No person shall be appointed to be, or to act as, the auditor of an IBC without his prior written consent.

(3) An IBC shall, whenever it appoints an auditor, or the particulars of an auditor are changed, lodge with the Registrar within thirty days of the appointment a notice thereof in the prescribed form accompanied by the auditor's written consent.

(4) The Authority may approve any suitable, qualified person to perform the duties required by this Order to be performed by an auditor, the application for such approval and the approval itself to be in the prescribed forms.

Auditor need not be appointed in certain circumstances.

96. An IBC need not appoint an auditor of the company if –

(a) the Articles of the company so provide;

- (b) all the members of the company resolve that such an appointment should not be made; or
- (c) at a general meeting of the company all the members present in person or by proxy resolve that such an appointment should not be made.

Appointment and removal of auditors.

97. (1) Subject to the provisions of sections 95 and 96, an IBC may appoint an approved auditor to be the auditor of the company for such period as the company may determine upon the previous auditor ceasing to hold office.

(2) An IBC may, at a general meeting of which notice has been given to the auditor not less than twenty-eight days before the date of the meeting, remove an auditor from office. Subject to section 96, where an auditor is removed, the IBC shall at the meeting at which the auditor is removed or at a general meeting held within one month thereafter, appoint a registered company auditor to take the place of the auditor so removed.

Auditor ceasing to be registered.

98. Unless the directors otherwise resolve, if an auditor ceases to be an approved auditor, he shall cease to hold office and the directors or members of the IBC shall immediately appoint another approved auditor, and that other auditor shall be the auditor of the company for the purposes of this Order for the period then current and, subject to making proper appraisal and review of the work of the auditor ceasing to be registered, such other auditor shall be entitled to use and rely upon the work of the first-mentioned auditor done up to the time of the appointment of the new auditor.

[S 37/2003]

Partners of auditors.

99. Where an approved auditor is a member of a partnership carrying on the practice of accountants and auditors and one or more members of that partnership is or are the auditors of an IBC, another member of such partnership being an approved auditor may, if the directors so resolve, be substituted as auditor of the company for the auditor ceasing to be registered with the written consent of the substitute auditor.

Remuneration of auditor.

100. The fees and expenses of an auditor of an IBC may be fixed by the directors unless the auditor requires such fees and expenses to be fixed by a resolution of members.

Auditor may attend meetings.

101. An auditor of an IBC shall be entitled to attend and address all meetings of members of the company.

Auditor to audit.

102. (1) Subject to section 96 an auditor of an IBC shall carry out an audit in respect thereof in each audit period.

(2) Every auditor shall report to the members as to his audit and matters disclosed thereby and as to every balance sheet and profit and loss account and as to any other accounts put before the members.

(3) Every auditor shall give such further reports and information as are required by regulations made under this Order.

Powers of auditors.

103. Every auditor shall obtain such information and explanations in relation to the affairs of the IBC of which he is auditor as he reasonably requires to complete his audit and the company shall take all proper steps to ensure that he is able to obtain such information and explanations and to have access to such books and records as he requires for his audit.

Powers, duties and obligations of auditors.

104. The powers, duties and obligations of auditors provided by this Order are in addition to any powers, duties and obligations specified in the Articles of an IBC and all auditors shall be entitled to be furnished with a copy of such Articles and shall be required to make themselves acquainted with the terms thereof.

Books and records, etc.

105. (1) An IBC shall keep minutes of all meetings of, and copies of all resolutions consented to by –

- (a) directors;
- (b) members;
- (c) committees of directors;
- (d) committees of officers; and
- (e) committees of members.

(2) The register, records and minutes required by this Order shall be kept at the registered office of the IBC within Brunei Darussalam.

(3) An IBC shall keep an imprint of its common seal (if any) at its registered office.

(4) An IBC shall keep a copy of every instrument creating a charge requiring registration under this order and at its registered office in Brunei Darussalam register of all mortgages and charges affecting any of its property, showing the property mortgaged or charged, the amount secured and the names of the mortgagees or, as the case may be, the persons entitled to the benefit of the charges.

(5) The register of mortgages and charges referred to in subsection (4) may be in such form as the directors may approve but, if it is in a form which cannot be read by the human eye, the IBC must be able to produce legible evidence of its contents.

(6) An IBC that wilfully contravenes this section shall be guilty of an offence and liable to a fine of ten thousand dollars and a further fine of one hundred dollars for each day on which the contravention continues after conviction.

Inspection of registers and other books and records.

106. (1) On written request made to an IBC, and on payment of the prescribed fee –

- (i) any officer, member, debenture holder, director or liquidator of an IBC or a foreign international company, or the Authority or;

- (ii) any other person with the written permission of such director, liquidator or of the Authority in either case with cogent reasons for searching having been supplied by such person to the Authority as the case may be,

may, personally or by an attorney, inspect during business hours –

- (a) the share register (or registers);
- (b) the register of debenture-holders maintained under section 59(3);
- (c) the register of mortgages and charges required by section 105(4);
- (d) the register of directors and secretaries required by section 67;
- (e) any books, records, minutes and consents required by section 105(1),

and may make copies of or take extracts from any such register.

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

(3) If any register or any item falling within subsection (1) is in a form which cannot be read by the human eye, the IBC shall provide a suitable means for inspection and for taking legible copies.

(4) An IBC or any other person who fails to comply with this section or obstructs any person wishing to exercise a right to inspect or take copies in accordance with this section shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand dollars.

DIVISION 2 - CONTRACTS, DISPOSAL OF ASSETS

Contracts generally.

- 107.** (1) Contracts may be entered into on behalf of an IBC as follows –
- (a) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties or to be in writing and under seal, may be entered into by or on behalf of the IBC in writing and signed by a person acting under the express or implied authority of the IBC in the presence of at least one individual witness who shall sign and provide his occupation and address and may, in the same manner, be varied or discharged; and
 - (b) 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 IBC by a person acting under the authority of the IBC and may, in the same manner, be varied or discharged.
- (2) A contract entered into in accordance with this section is valid and binding on the IBC and its successors.
- (3) A contract or other instrument executed by or on behalf of an IBC by a director or an authorised officer or agent of the IBC is not invalid by reason only of the fact that the IBC's common seal (if any) is not affixed to the contract or other instrument.
- (4) An IBC need not have a common seal, but if it does, the Articles shall govern its custody and use.

Contracts before incorporation.

- 108.** (1) A person who enters into a written contract in the name of an IBC before it 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 to the contrary the IBC adopts the contract under subsection (2).

(2) Within a reasonable time after an IBC comes into existence, the IBC 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) Where an IBC adopts a contract under subsection (2) –

(a) the IBC shall be bound by and entitled to the benefits of, the contract as if the IBC 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 IBC shall cease to be bound by or entitled to the benefits of the contract and shall be indemnified by the IBC in respect of any liabilities incurred in the name of an IBC as provided in section 108(1).

Contracts for payment or transfer.

109. (1) If any contract, deed or other instrument relating to the payment of a claim or the delivering or transferring of property of any description (and wherever situated) is entered into by an IBC and the contract, 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, 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 shall not be impaired or defeated by any law or rule of law governing the transfer of property by will, gift or on intestacy.

(2) Subsection (1) applies to a contract, deed or other instrument 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 that subsection 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.

110. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by an IBC if it is made, accepted or endorsed in the name of the IBC –

- (a) by or on behalf or on account of the IBC; or
- (b) by a person acting under the express or implied authority of the IBC,

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

Power of attorney.

111. (1) An IBC 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, as its agent to act on behalf of the IBC and to execute contracts, deeds and other instruments on behalf of the IBC.

(2) A contract, deed or other instrument executed on behalf of the IBC by an agent appointed under subsection (1), in manner provided by section 107, is binding on the IBC and has the same effect as if it were under the IBC’s common seal (if any).

Authentication or attestation.

112. (1) A document requiring authentication or attestation by an IBC may be signed by a director, a resident director, a secretary, an authorised officer or an agent of the IBC, and need not be under the IBC’s common seal (if any).

(2) If the signature of any director, a resident director, secretary, officer or agent authenticating or attesting a document is verified in writing by the IBC's registered agent, the IBC is bound by the document.

Major disposal of assets.

113. (1) Subject to subsection (2), any sale, transfer, lease, exchange or of other disposal of more than fifty per cent of the assets of an IBC, if not made in the usual or regular course of the business carried on by the IBC, must be approved by the directors.

(2) Subsection (1) does not apply to a disposal by way of mortgage, charge or other encumbrance, nor to such a transfer as is referred in section 17(3).

Proposed compromise between IBC and creditors or members.

114. (1) Where a compromise or arrangement is proposed between an IBC and its creditors of any class, or between the IBC and its members of any class, then, on the application of the IBC or of any member of the IBC or creditor of that class or, in the case of a winding-up, of the liquidator, the Court may order a meeting of the creditors or class of creditors, or of the members or a class of members, as the case may be.

(2) In a case where –

- (a) a majority representing 75 per cent in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to a compromise or arrangement,; and
- (b) the compromise or arrangement is approved by an order of the Court,

the compromise or arrangement shall be binding on the IBC and on all the creditors or class of creditors or, as the case may be, the members or class of members and, in the event of a winding-up, on the liquidator.

(3) An order under subsection (2)(b) shall not take effect until a copy has been filed with the Registrar and a copy of the order shall be annexed to any copy of the Memorandum and Articles of the IBC issued after the making of the order.

(4) In this section, "arrangement" includes a reorganisation of the share capital of an IBC by the consolidation of shares of different classes or by the division of shares into different classes or both.

DIVISION 3 - REGISTRATION OF CHARGES

Filing of charges.

115. (1) Subject to this Order, where a charge to which this section applies is created by an IBC, the company or any other person interested in the charge may cause to be lodged through a registered agent with the Registrar for filing within forty-two days after the creation of the charge –

- (a) a certified copy of the instrument, if any, by which the charge is created or evidenced; or
- (b) a statement in the prescribed form giving a short description of the property charged, the amount thereby secured, nature of the instrument, and the names of the chargees or persons entitled to the benefit thereof.

(2) Where the instrument or a statement is not lodged with the Registrar in accordance with subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, and without prejudice to any contract or obligations for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

(3) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured thereby shall immediately become payable.

(4) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any asset of an IBC.

(5) Where a charge created in Brunei Darussalam affects property outside Brunei Darussalam the instrument creating or purporting to create a charge or a certified copy thereof may be lodged for filing under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situated.

(6) When a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by an IBC, it shall be sufficient if there is lodged with the Registrar within forty-two days after the execution of the instrument creating the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following particulars –

- (a) the total amount secured by the whole series;
- (b) the date of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged;
- (d) the names of the trustee, if any, for the debenture-holders; and
- (e) the instrument creating the charges or a copy of the instrument and a certificate by a witness or an official of the company verifying the execution of the instrument and verifying the copy to be a true copy.

(7) For the purposes of subsection (5) where more than one issue is made of debentures in the series, there may be lodged with the Registrar within forty-two days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.

(8) Where a charge requiring registration under this section is created before the lapse of forty-two days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of the debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as it relates to the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Registrar that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

(9) For the purposes of this section and section 116 “certified copy” means a copy certified by any director, resident secretary or other officer of an IBC.

Filing of pre-existing charges.

116. (1) Where an IBC acquires any property which is subject to a charge of any such kind as may, if it had been created by the company after acquisition of the property, have been filed under this Division, the company or any other person interested in the charge may cause –

- (a) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of charges or persons entitled to the benefit thereof; or
- (b) a certified copy of the charge, to be lodged with the Registrar for filing within forty-two days after the date on which the acquisition is effected.

(2) Where any charge to which this section applies is not filed with the Registrar pursuant to subsection (1), the charge shall, so far as any security on the company’s property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

Filing of charges by foreign companies which become registered under this Order.

117. (1) This section applies to charges by foreign international companies in respect of property situated in Brunei Darussalam if:

- (a) the company creates the charge whilst registered under Part XI;
- (b) the company has previously created the charge prior to registration, but subsequently registers under Part XI.

(2) In respect of such a charge –

- (a) the company or any other person interested in the charge may cause;
 - (i) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of charges or persons entitled to the benefit thereof; or
 - (ii) a certified copy of the charge, to be lodged with the Registrar for filing within forty-two days after the date on which the charge was created where the charge was created whilst the international company was registered under Part XI, and within forty-two days after the registration of the company under Part XI where the charge was created prior to registration under Part XI; and
- (b) the company shall give notice in writing to all other persons interested in the charge of the fact of the registration of the company under Part XI, and such notice shall be given to such persons within fifteen days of the registration of the company under Part XI.

(3) Where, in relation to any charge to which this section applies –

- (a) notice has been given to all persons interested in the charge pursuant to paragraph (b) of subsection (2); and
- (b) a statement or certified copy of the charge is not lodged with the Registrar pursuant to paragraph (a)(i) or (a)(ii) of subsection (2),

the charge shall, so far as any security on the company's property is conferred thereby and without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

[S 37/2003]

(4) Where, in relation to any charge to which this section applies, notice is not given to all persons interested in the charge pursuant to paragraph (b) of subsection (2), the company and every officer in default is guilty of an offence and liable upon conviction to a fine not exceeding fifty thousand dollars.

[S 37/2003]

(5) Nothing in this section shall render void any charge to which this section applies where notice has not been given by the company to all other persons interested in the charge pursuant to paragraph (b) of subsection (2).

[S 37/2003]

Register of charges to be kept by Registrar.

118. (1) The Registrar shall keep a register of all the charges lodged for filing under this Division and shall enter in the register with respect to those charges the following particulars –

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 115(6); and
- (b) in the case of any other charge –
 - (i) if the charge is a charge created by an IBC, the date of its creation and, if the charge was a charge existing on property acquired by an international company, the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) a description sufficient to identify the property charged; and
 - (iv) the name of the person entitled to the charge.

(2) The Registrar shall upon payment of the prescribed fee issue to the registered agent who registered the charge a certificate of every charge filed stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to filing have been complied with.

Endorsement of certificate of registration on debentures.

119. (1) An IBC shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock, which is issued by the company and the payment of which is secured by a charge so registered –

- (a) a copy of the certificate of filing under section 118(2); or
- (b) a statement that filing has been effected and the date of filing.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock issued by an IBC before the charge was filed.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars.

Filing of satisfaction and release of property from charge.

120. (1) Where, with respect to a registered charge created by an IBC –

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking,

the company may lodge through its registered agent with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall file such memorandum and shall enter particulars of the same in the register.

(2) The memorandum must be accompanied by the prescribed fee and supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

Extension of time and rectification of register of charges.

121. The Registrar, on being satisfied that the omission to file a charge within the time required or that the omission or mis-statement of any particular with respect to any such charge or in any memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that, on other grounds, it is just and equitable to grant relief, may, on application lodged by the IBC responsible for the omission or mis-statement or any person interested and on such terms and conditions as seem to the Registrar just and expedient, direct that the time for filing be extended or that the omission or mis-statement be rectified.

Documents made outside Brunei Darussalam.

122. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place outside Brunei Darussalam, be extended by twenty-eight days or such further period as the Registrar may from time to time allow.

Application of Division.

123. (1) A reference in this Division to an IBC shall be read as including a reference to a foreign international company registered under this Order, but nothing in this Division applies to a charge of a foreign international company on property outside Brunei Darussalam.

(2) Nothing in this Division shall require a foreign company to file any charge until the foreign company is registered under Part XI.

PART X
MERGERS, CONSOLIDATIONS AND RIGHTS OF DISSENTING MEMBERS

Interpretation.

124. (1) 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;

“domestic company” means a company incorporated under the Companies Act (Chapter 39);

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

“parent company” and “subsidiary company” shall be construed in accordance with subsection (2);

“registered”, in relation to a domestic company, means registered under the Companies Act (Chapter 39);

“solvency conditions” shall be construed in accordance with subsection (3);

“surviving company” means the constituent company into which one or more constituent companies have merged.

(2) For the purposes of this Part a company is a “parent company” in relation to another company (a “subsidiary company”) if it owns at least ninety per cent of the outstanding shares of each class and series of shares in that other company.

(3) For the purposes of this Part, a company (whether or not being an IBC) fulfils the solvency conditions at any time if, at that time –

(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 company’s assets will not be less than the sum of its total liabilities, 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 a company's assets is conclusive for this purpose, except in so far as a question of law may be involved.

Merger and consolidation.

125. (1) In accordance with subsections (2) to (6) –

(a) two or more IBCs may merge or consolidate; and

(b) one or more IBCs may merge or consolidate with one or more domestic companies, or foreign international companies if the surviving company or the consolidated company will satisfy the requirements for an IBC in section 6.

(2) The directors of each constituent company which proposes to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case may require –

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

(b) in relation to each constituent company, the designation and number of outstanding shares of each class and series of shares, specifying –

(i) which class and series is entitled to vote on the merger or consolidation; and

- (ii) which class and series, if any, is 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 or other securities in the surviving or consolidated company or into 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;
- (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for an IBC, except statements as to facts not available at the time the plan of consolidation is approved by the directors; and
- (f) in respect of each constituent company, a copy of a resolution of the directors of that company stating that, in their opinion –
 - (i) the merger or consolidation is in the best interests of the company; and
 - (ii) at the date of the plan, the company fulfils the solvency conditions.

(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed 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 other property.

(4) The plan of merger or consolidation must be authorised by a 75 per cent resolution of the members and, for this purpose –

- (a) if the Memorandum or Articles of a constituent company so provide or if the plan of merger or consolidation contains appropriate provisions (as defined in paragraph (b)), the outstanding shares of a class or series are entitled to vote on the resolution as a class or series;

- (b) the reference in paragraph (a) to appropriate provisions is a reference to provisions which, 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;
- (c) 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 he is entitled to vote on the merger or consolidation; and
- (d) 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 he is entitled to consent to the plan.

(5) After approval of the plan of merger or consolidation by the directors and members of each constituent company, each such company shall serve a copy of the plan on each of its creditors for more than five hundred dollars and shall execute articles of merger or consolidation containing particulars of –

- (a) 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 an IBC;
- (b) the date on which the Memorandum and Articles of each constituent company were registered; and
- (c) the manner in which the merger or consolidation was authorised in respect of each constituent company.

(6) Not earlier than thirty days after the completion of the service of the copy of the plan on creditors in accordance with subsection (5), the articles of merger or consolidation shall be submitted to the Registrar accompanied by the prescribed fee and a declaration, signed by the persons who are to be the directors of the surviving company or, as the case may be, the consolidated company, that, in their opinion that company will fulfil the solvency conditions immediately after the merger or consolidation takes effect.

- (7) Unless the Registrar –
- (a) has reason to believe that there has been a failure to comply with any of the preceding provisions of this section or that the solvency conditions will not be fulfilled as stated in the declaration, or
 - (b) considers that the name proposed for the surviving company or, as the case may be, the consolidated company would be in contravention of section 13,

the Registrar shall retain and register the articles of merger and consolidation submitted to him under subsection (6) and, upon the registration of those articles, the Registrar shall issue a certificate under his hand and seal certifying that they have been so registered.

(8) A certificate issued by the Registrar under subsection (7) is *prima facie* evidence of compliance with all the requirements of this Order in respect of the merger or consolidation to which the certificate relates.

Merger with subsidiary.

126. (1) If the surviving company will be a parent company which is an IBC, the parent company may merge with one or more of its subsidiary companies (whether IBCs or domestic companies) in accordance with subsections (2) to (6) (and without the authorisation of the members of any company).

- (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 of each constituent company, the designation and number of outstanding shares of each class and series of shares;
 - (c) in respect of each constituent company which is a subsidiary company, the number of shares of each class and series of shares owned by the parent company;

- (d) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each constituent company into shares or other securities in the surviving company or into money or other property, or a combination thereof; and
- (e) in respect of each constituent company, a copy of a resolution of the directors of that company stating that, in their opinion –
 - (i) the merger is in the best interests of the company; and
 - (ii) at the date of the plan, the company fulfils the solvency conditions.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into a particular or mixed 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 other property; but, if the parent company is not to be 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) The directors of each constituent company shall serve a copy of the plan of merger on each creditor of the company for more than two thousand dollars or equivalent and the parent company must give a copy of the plan of merger or an outline thereof to every member of each constituent company which is a subsidiary company, unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger must be executed by the parent company containing particulars of –

- (a) the plan of merger;
- (b) the date on which the Memorandum and Articles of each constituent company were registered;
- (c) if the parent company does not own all the shares in each of the other constituent companies, the date on which a copy of the plan or outline thereof was given to members of those companies in accordance with subsection (4).

(6) Not earlier than thirty days after completion of the service of the copy of the plan on creditors in accordance with subsection (5), the articles of merger shall be submitted to the Registrar accompanied by the prescribed fee and a declaration, signed by the persons who are to be the directors of the surviving company, that, in their opinion that company will fulfil the solvency conditions immediately after the merger takes effect.

(7) Unless the Registrar –

- (a) has reason to believe that there has been a failure to comply with any of the preceding provisions of this section or that the solvency conditions will not be fulfilled as stated in the declaration; or
- (b) considers that the name proposed for the surviving company would be in contravention of section 13,

the Registrar shall retain and register the articles of merger submitted to him under subsection (6) and, upon the registration of those articles, the Registrar shall issue a certificate under his hand and seal certifying that they have been so registered.

(8) A certificate issued by the Registrar under subsection (7) is *prima facie* evidence of compliance with all the requirements of this Order in respect of the merger to which the certificate relates.

Effect of merger or consolidation.

127. (1) A merger or consolidation under the preceding provisions of this Part shall be effective on the date the articles of merger or consolidation are registered or on such later date, within the period of thirty days beginning on the date of registration, as is stated in the articles.

(2) As soon as such a merger or consolidation becomes effective the following shall occur by virtue of this section (and without any further action on the part of any person) –

- (a) so far as consistent with its Memorandum and Articles, as amended by the articles of merger or consolidation, the surviving company or, as the case may be, the consolidated company shall subject to this Order have

all the 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 shall be amended to the extent, if any, that changes in the 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 an IBC shall be incorporated into the Memorandum and Articles of the consolidated company;
- (d) property of every description, including the business, of each of the constituent companies shall vest in the surviving company or, as the case may be, the consolidated company; and
- (e) the surviving company or, as the case may be, the consolidated company shall become liable for all claims debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs under the preceding provisions of this Order –

- (a) no conviction, judgment, ruling, order, claim, debt, liability of obligation due, and no cause existing, against a constituent company or against any member, director, officer or agent of a constituent company shall be released or impaired by virtue of the merger or consolidation; and
- (b) no proceedings, whether civil or criminal, pending at the time of the merger or consolidation by or against a constituent company or against any member, director, officer or agent of a constituent company shall be abated or discontinued by virtue of the merger or consolidation, but –
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or, as the case may be, the consolidated company or against the member, director, officer or agent; or

[S 37/2003]

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

(4) Except in the case of the surviving company in a merger, the Registrar shall strike off the register any IBC that is a constituent company in a merger or a consolidation and the Registrar under the Companies Act (Chapter 39) shall take the like action in respect of a constituent company which is a domestic company.

Merger or consolidation with foreign company.

128. (1) In accordance with subsections (2) to (5), one or more IBCs may merge or consolidate with one or more foreign companies, including the case where one company is a parent company and one more of the other constituent companies are its subsidiaries.

(2) No foreign company may be a constituent company in a merger or consolidation unless such a merger or consolidation is permitted by the law of the jurisdiction in which it is incorporated (and in relation to a foreign company, that law is in this section referred to as its local law).

(3) With respect to a merger or consolidation, an IBC shall comply with the provisions of this Part but it shall be for a foreign company to comply with its local law, except that, where the local law does not require the members of the foreign company or a specified proportion of them, to consent to the proposed merger or consolidation, it shall be a condition of this section that the proposal is approved by a 75 per cent resolution of the members.

(4) If the surviving company or the consolidated company is to be a foreign company, the company shall deliver to the Registrar –

- (a) an agreement that service of process may be effected on it in Brunei Darussalam in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company which is an IBC or in respect of proceedings for the enforcement of the rights of a dissenting member of such a constituent company against the surviving company or the consolidated company;

- (b) an irrevocable appointment of the Registrar as its agent to accept service of process in any proceedings falling within paragraph (a);
- (c) an agreement that it will promptly pay to the dissenting members of a constituent company which is an IBC the amount, if any, to which they are entitled under this Order with respect to the rights of dissenting members; and
- (d) a certificate of merger or consolidation issued by the appropriate authority in the local jurisdiction or, if no such certificate is issued by that authority, then such evidence of the merger or consolidation as the Registrar considers acceptable.

(5) The effect of a merger or consolidation under this section is the same as in the case of a merger or consolidation under section 127 except that, if the surviving company or the consolidated company is a foreign company, that effect is subject to any provisions to the contrary in the local law.

- (6) A merger or consolidation under this section takes effect as follows –
 - (a) if the surviving company or the consolidated company is an IBC, it is effective on the date the articles of merger or consolidation are registered or on such later date, within the period of thirty days beginning on the date of registration, as is stated in the articles; and
 - (b) if the surviving company or the consolidated company is an foreign company, the merger or consolidation is effective as provided by the local law.

Redemption of minority shares.

129. (1) Subject to any relevant modification, on a merger or consolidation under section 125 –

- (a) members holding ninety per cent of the votes of outstanding shares entitled to vote; and
- (b) members holding ninety per cent of the votes of outstanding shares of each class and series of shares entitled to vote as a class or series,

may give a written instruction to an IBC directing it to redeem the shares held by the remaining members.

(2) On receipt of a written instruction under subsection (1), the IBC shall proceed with the redemption of the shares specified in the instruction, irrespective of whether the shares are by their terms redeemable.

(3) For the purposes of that redemption, within seven days of the receipt of the written instruction, the IBC shall give written notice to each member whose shares are to be redeemed, stating the redemption price and the manner in which the redemption is to be effected.

(4) On a redemption of a member's shares under this section, the member shall be entitled to receive the fair value of his shares; and subsections (3) to (6) of section 132 shall apply for that purpose.

Power of Court to intervene.

130. (1) If the Court is satisfied that the implementation of a proposed merger or consolidation would unfairly prejudice a member or creditor of a constituent company or any other person to whom such a company is under any obligation or liability, then on the application of that member, creditor or other person, the Court may make such order as it thinks fit in relation to the proposed merger or consolidation.

(2) Except where the Court allows in any particular case, an application under subsection (1) shall be made before the merger or consolidation in question becomes effective.

(3) An order under subsection (1) may be made on such terms and conditions as the Court thinks fit and, without prejudice to the generality, an order under that subsection may do all or any of the following –

- (a) provide that the merger or consolidation shall not become effective;
- (b) modify the terms of the proposed merger or consolidation;

- (c) direct any or all of the constituent companies to reconsider the proposed merger or consolidation;
- (d) require the payment of any sum by way of compensation or settlement.

Rights of dissenting members.

131. (1) Subject to subsection (2), a member of an IBC limited by shares shall be entitled to payment of the fair value of his shares upon dissenting from –

- (a) a merger or consolidation in which the IBC is a constituent member;
- (b) such a sale, transfer, lease, exchange or other disposal as is referred to in section 113; or
- (c) a compromise approved under section 114.

(2) In subsection (1) –

- (a) paragraph (a) does not apply in the case of a merger if the IBC is the surviving company and the member continues to hold the same or similar shares; and
- (b) paragraph (b) does not apply if the disposal is pursuant to an order of a court having jurisdiction in the matter nor if the disposal is for money on terms requiring all or substantially all net proceeds to be distributed to members in accordance with their respective interests within one year after the date of the disposal.

(3) Subject to subsection (4), where a member wishes to exercise his entitlement under subsection (1), he must give to the company, before the meeting of members at which the action is submitted to the vote, written objection to the action, stating that he proposes to demand payment for his shares if the action is taken.

(4) Subsection (3) does not apply to a member if –

- (a) the IBC did not give notice of the meeting to the member in accordance with this Order; or
- (b) the proposed action is authorised by written consent of the members without a meeting.

(5) Within the period of twenty-one days beginning on the relevant date, that is to say, the date on which the vote of members was taken authorising the action or, as the case may be, on which written consent of the members was obtained without a meeting, the IBC must give written notice of that authorisation or consent –

- (a) to each member who gave written notice of objection under subsection (3); and
- (b) to each member to whom that subsection does not apply and who did not vote for the proposed action or, as the case may be, did not give written consent to it.

(6) If a member to whom the IBC is required to give notice under subsection (5) wishes to pursue his right to dissent, he must, in accordance with subsection (7), give written notice of his decision to pursue that right, 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 dissents must do so in respect of all the shares he holds in the IBC.

(7) A notice under subsection (6) must be served within the twenty days immediately following the end of the period specified in subsection (5), except that where the dissent is to a merger under section 126, the notice must be served within the 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 that section.

Procedure following giving of notice of dissent or redemption.

132. (1) Upon the giving of a notice under section 131(6) (in this section referred to as a “dissent notice”), the person giving the notice (in this section referred to as “the claimant”) shall cease to have any of the rights of a member of the IBC except the right to be paid the fair value of his shares.

(2) Where a dissent notice is given, then, within the seven days immediately following whichever is the later of –

- (a) the date on which expires the twenty days applicable under section 131(7); and
- (b) the date on which the proposed action is put into effect,

the IBC or, in the case of a merger or consolidation, the surviving company or the consolidated company must make a written offer to the claimant to purchase his shares at a specified price that the company determines to be their fair value.

(3) The following provisions of this section apply not only where a dissent notice is given but also where a member of an IBC receives a notice under section 129(3) (in this section referred to as a “redemption notice”) and, in relation to a redemption notice, the member receiving it is “the claimant”.

(4) If, within the thirty days immediately following the date on which an offer is made under subsection (2) or, as the case may be, the redemption notice is given to the claimant under section 129(3), the company and the claimant agree upon the price to be paid for the shares, the company shall pay that amount in money to the claimant on the surrender of the certificates representing his shares.

(5) If the company and the claimant fail to agree as mentioned in subsection (4), then, within the twenty days following the end of the thirty days specified in that subsection –

- (a) the company and the claimant shall each designate an appraiser;
- (b) the two designated appraisers shall together designate a third appraiser;
- (c) the three appraisers shall fix the fair value of the shares owned by the claimant as of the close of business on the day prior to the operative date, excluding any appreciation or depreciation directly or indirectly induced by the action concerned or the proposal to take it;
- (d) the value fixed under paragraph (c) shall be binding on the company and the claimant for all purposes and the company shall pay that amount in money to the claimant on the surrender of the certificates representing his shares,

and, for the purposes of paragraph (c), the operative date is the relevant date specified in section 131(5) or, as the case may require, the date on which the IBC received the instruction under section 129(1).

(6) Shares acquired by a company pursuant to subsections (4) or (5) shall be cancelled but, if the shares are shares of a surviving company, they shall be available for reissue.

(7) Where a member of an IBC enforces his rights by giving a dissent notice, he shall not be entitled to enforce any other right which he might have by virtue of his holding of shares, other than a right to institute proceedings on the ground that any action is illegal.

PART XI

FOREIGN INTERNATIONAL COMPANIES

Interpretation.

133. (1) This Part applies to a foreign company only if it has a place of business or is carrying on international business in compliance with section 6 in Brunei Darussalam.

(2) In this Part, the expression “carrying on business in Brunei Darussalam” includes –

- (a) carrying on international business in, from or through Brunei Darussalam;
- (b) establishing or using a share transfer or share registration office in Brunei Darussalam or administering, managing or otherwise dealing with property situated in Brunei Darussalam as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and

[S 37/2003]

- (c) in the case of a foreign international company which the Authority has by notice published in the *Gazette* specified for the purposes of this paragraph –

[S 130/2010]

- (i) permitting or suffering the company's own shares to be, in Brunei Darussalam, dealt with, issued, transferred or made the subject of options or agreements;
- (ii) permitting or suffering to be made in Brunei Darussalam transfers of, or dealings in respect of, or agreements or options to sell or purchase, securities, notes or rights issued by it to the public; or
- (iii) permitting or suffering to be made in Brunei Darussalam transfers of, or dealings in respect of, or agreements or options to sell or purchase, securities, notes or rights, by reason of which transfers, dealings, agreements or options the public might acquire an interest in the company.

(3) Notwithstanding subsection (1), a foreign international company shall not be regarded as carrying on business in Brunei Darussalam by reason only of the fact that in Brunei Darussalam it –

- (a) is, or becomes, a party to any action or suit or any administrative or arbitration proceedings or any claim or dispute; or
- (b) conducts unsolicited isolated transactions that are completed within a period of thirty-one days, not being one of a number of similar transactions repeated more than twice.

Registration of foreign international companies.

134. (1) A foreign company shall not have a place of business in Brunei Darussalam or carry on business in Brunei Darussalam unless it is registered as a foreign international company under this Part or under Part IX of the Companies Act (Chapter 39), and in the case of a foreign international company, appoints a registered agent and a resident secretary supplied by a registered agent, and a foreign company which acts, and every officer thereof who permits

the foreign company to act, in contravention of this subsection shall be guilty of a offence against this Order.

[S 37/2003]

(2) Every foreign company desirous of registering under this Part shall, prior to establishing a place of business, or carrying on business, in Brunei Darussalam, lodge through its registered agent with the Registrar for registration –

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin, or a document of similar effect;
- (b) a certified copy of its charter, statute or Memorandum and Articles or other instrument constituting or defining its constitution;
- (c) a list of its directors and officers containing similar particulars with respect to its directors as are required to be contained in the register of the directors and secretaries of an IBC under section 67;
- (d) where the list referred to in paragraph (c) includes directors resident in Brunei Darussalam who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign international company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal (if any) of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name of a registered agent that is authorized to accept on its behalf service of process and any notice required to be served on the company;
- (f) a certificate in the prescribed form made by an officer of the registered agent;

[S 75/2013]

- (g) a certificate of due diligence;

[S 75/2013]

(h) a list of its members containing similar particulars as are required to be contained in the share register or register of members of an IBC under sections 46 and 47 respectively; and

[S 75/2013; S 53/2017]

(i) such other information and documents as the Registrar may require,

[S 75/2013]

and the Registrar may, on payment of the prescribed fees, and subject to this Order and any condition which he may impose, register the company under this Part as a foreign international company by registration of the documents.

(3) The Registrar shall issue a certificate in the prescribed form of every registration of a foreign international company and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

(4) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (2)(e) is executed by a person on behalf of a foreign international company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by the registered agent shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(5) A foreign international company shall pay the prescribed initial fee and shall pay an annual fee of such amount as may be prescribed not later than thirty days from each anniversary of the date of its registration.

Prohibition and restriction on foreign international company.

135. (1) A foreign international company shall not carry on in Brunei Darussalam any business which an IBC is prohibited to carry on.

(2) The Authority may, prescribe that any foreign international company be restricted from carrying on any specified business in Brunei Darussalam and may, impose conditions subject to which any specified business may be carried on by a foreign international company in Brunei Darussalam.

Registered office of foreign international companies.

136. (1) Every foreign international company shall at all times have a registered office in Brunei Darussalam, which office shall be the principal office of a registered agent.

(2) Notice in the prescribed form of the situation of the registered office and any change thereof shall be lodged with the Registrar within one month after the date of registration of the foreign international company or the date of the change, as the case may be.

(3) If default is made in complying with this section, the foreign international company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars and to a further fine not exceeding fifty dollars for every day on which the default continues after conviction.

Return to be lodged where documents, etc., altered.

137. (1) Where any change or alteration is made in –

- (a) the charter, statute, Memorandum or Articles of a foreign international company, or other instrument relating to the company, lodged with the Registrar;
- (b) the directors of a foreign international company or in the name or address of any director;
- (c) the address of the registered office of a foreign international company in its place of incorporation or origin;
- (d) the name of a foreign international company;
- (e) the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of a foreign international company;

[S 75/2013]

- (f) the registered agent or the name or address of the registered agent referred to in section 134(1); or

(g) the shareholders or register of members of a foreign international company,

[S 75/2013]

the foreign international company shall, within one month after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as the regulations may require.

(2) Upon receipt of the aforesaid particulars of the change or alteration, the Registrar shall, subject to this Order, register the change or alteration.

(3) On the lodging with the Registrar of particulars of any change or alteration of the name of a foreign international company referred to subsection (1)(d), the Registrar shall issue a certificate in the prescribed form under his hand and seal, and that certificate shall be *prima facie* evidence in all Courts as to the change or alteration of the name of the company.

[S 37/2003]

(4) If a foreign international company increases or decreases its authorised share capital, it shall, within thirty days after such change, lodge with the Registrar notice of the amount from which and to which it has been so changed.

(5) If a foreign international company not having a share capital increases the number of its members beyond the registered number, it shall, within thirty days after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

Service on foreign international companies.

138. Any process or document required to be served on a foreign international company shall be sufficiently served if addressed to the foreign international company and left at or sent by post to its registered office in Brunei Darussalam but –

- (a) where any such company makes default in filing with the Registrar the name and address of a registered office which is authorised to accept on behalf of the company service of process or notices;
- (b) if at any time the registered office so notified has ceased to exist; or
- (c) if for any other reason service of process or notice cannot be effected,

the document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Brunei Darussalam, or, if no such place of business has been established, the document may be served on the company by registered post to any place of business of the company in the country of its incorporation.

Cessation of business in Brunei Darussalam.

139. If a foreign international company ceases to have a place of business or to carry on business in Brunei Darussalam it shall, within one month after it so ceases, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged, its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall forthwith remove the name of the foreign international company from the register.

Liquidation or dissolution of company in place of incorporation or origin.

140. (1) If a foreign international company goes into liquidation or is dissolved in its place of incorporation or origin –

(a) the registered agent shall, immediately after the commencement of the liquidation or dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, a notice of such appointment;

[S 37/2003]

(b) the Registrar shall, after receipt of the notice, forthwith appoint a liquidator and, until the winding-up of its affairs in Brunei Darussalam is completed, the foreign international company shall be deemed to continue to exist in Brunei Darussalam; and

(c) the Court shall be deemed to have ordered that it be wound up.

(2) The liquidator appointed by the Registrar shall get in all the assets of the foreign international company situate or recoverable in Brunei Darussalam and shall, in so doing, have all the powers of a liquidator of an IBC.

(3) Before paying or transferring to a foreign liquidator of a foreign international company in the place where it was formed or incorporated any of the assets got in within Brunei Darussalam, the liquidator appointed by the Registrar shall –

(a) pay to the Registrar all penalties, costs, fees and charges due and owing;

(b) pay the amount of all fees payable under the applicable legislation of Brunei Darussalam; and

[S 37/2003]

(c) pay to any person resident in Brunei Darussalam to whom, at the time of the appointment of the liquidator in Brunei Darussalam, any debt incurred *bona fide* by a foreign international company in respect of supply of services to or for the foreign international company is due, the amount of such debt, and such penalties, costs, fees, charges, taxes and debts shall be a charge upon the assets of the foreign international company ranking after the costs of the liquidator appointed by the Registrar but in priority to all other charges and claims whatsoever.

(4) The provisions of this Order relating to the striking-off from the register of the names of defunct companies shall apply *mutatis mutandis* to a foreign international company.

[S 37/2003]

Names of foreign international companies.

141. (1) Except with the consent of the Authority, a foreign international company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Registrar is not otherwise willing to accept for registration.

[S 103/2010]

(2) If a foreign international company is registered, either in error or otherwise, with a name with which it should not have been registered, the Registrar may, after giving thirty days notice to the foreign international company requiring it to change its name, strike the company from the register upon default in complying.

(3) No foreign international company shall use, in Brunei Darussalam or elsewhere, in respect of acts done or to be done in Brunei Darussalam, any name other than that under which it is registered under this Part and every foreign international company and every officer of the company who knowingly authorises or permits the default shall be guilty of an offence against this Order.

Returns by foreign international companies.

142. (1) A foreign international company shall make an annual return in the prescribed form, and shall lodge the return with the Registrar not later than thirty days prior to the anniversary of the date of its registration or such later date as may be agreed to in writing by the Registrar.

[S 37/2003]

(2) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations –

[S 103/2010]

- (a) prescribing the registers and returns to be kept and made by a foreign international company and fixing the times within which the same must be kept and made; and
- (b) prescribing the fees and charges to be paid for the lodging of any annual return.

PART XII

CONVERSION OF FOREIGN COMPANIES INTO IBCS

Conversion to IBC.

[S 37/2003]

143. (1) In accordance with the provisions of this Part, a foreign company may convert into an IBC and in this Part, in relation to a foreign company, the “local law” means the law of the jurisdiction in which it is incorporated.

- (2) A foreign company may not so convert unless –
- (a) it fulfils and will continue to fulfil the conditions in section 6;
 - (b) it is able under the local law to transfer its incorporation;
 - (c) it has complied with the provisions of the local law as to the transfer of incorporation;
 - (d) where the local law does not require the members of the company or a specified portion of them, to consent to the transfer of incorporation, the

proposed transfer has been approved by a 75 per cent resolution of the members; and

(e) the liability of the members of the company is limited in the way specified in section 5(3)(a), (b), (c) or (e), construing the reference in those provisions to the Memorandum as referring to any document having similar effect under the local law.

[S 37/2003]

(3) Without prejudice to subsection (2), a foreign company may not convert into an IBC if –

- (a) the company is being wound up, is in liquidation or has been declared insolvent;
- (b) a receiver or administrator has been appointed, whether by a court or otherwise, in relation to any property of the company;
- (c) the company has entered into a compromise or arrangement with a creditor and the compromise or arrangement is in force; or
- (d) an application, which has not been disposed of, has been made to a court –
 - (i) to put the company into liquidation, to wind it up or to have it declared insolvent;
 - (ii) for the approval of a compromise or arrangement between the company and a creditor; or
 - (iii) for the appointment of a receiver or administrator in relation to any property of the company.

(4) In subsection (3), “court” means a court or other judicial tribunal, wherever situated.

(5) Without prejudice to subsections (2) and (3), a foreign company may not convert into an IBC unless, immediately after conversion, the company will, applying the test in section 124(3), fulfil the solvency conditions at that time.

Application to Registrar for registration as an IBC.

144. (1) An application for a foreign company to convert into an IBC under this Part shall be made to the Registrar by a registered agent, accompanied by the prescribed fee and the following –

- (a) a copy of the company's certificate of incorporation or other similar document providing evidence of incorporation;
- (b) a copy of the Memorandum and Articles which are to be binding on the company immediately after its conversion into an IBC;
- (c) a certificate given in writing by the registered agent certifying that the company is not prohibited from converting into an IBC by virtue of any provision of section 143 and that the Memorandum and Articles referred to in paragraph (b) comply with sections 8 and 9;
- (d) a statement of the names and addresses of the company's directors and of the persons (if different) who are to be the company's directors after conversion into an IBC;
- (e) a statement signed by each of the persons who is to be a director of the company after such conversion consenting to being such a director;
- (f) a certificate of due diligence;
- (g) such other information and documents, if any, as the Registrar may require, either generally or in relation to a particular application.

(2) All the copies, documents and other information referred to in subsection (1) shall be written in the English language or, if written in another language, shall be accompanied by a certified translation into the English language as provided in Part III.

Registration of foreign company as IBC.

145. (1) Subject to section 13, if, on an application under section 144, the Registrar is satisfied that the requirements of this Part with respect to the conversion of a foreign company as an IBC have been complied with, he shall register the Memorandum and Articles which accompanied the application.

(2) For the purposes of subsection (1), the Registrar may treat the certificate given under section 144(1)(c) as sufficient evidence of the matters certified.

(3) On the registration of Memorandum and Articles under subsection (1) the Registrar shall issue a certificate of conversion of the foreign company into an IBC; and section 12 shall apply in relation to such a certificate as it applies in relation to a certificate of incorporation issued under section 11(3).

(4) Subject to section 147, a certificate issued under subsection (3) shall be *prima facie* evidence of compliance with the requirements of this Order as to the conversion of a foreign company into an IBC.

(5) When the Registrar issues a certificate under subsection (3) in respect of a foreign company, the company shall, as soon as possible, file with the Registrar a certificate or other document issued under the law of the jurisdiction in which it was last incorporated certifying that it has ceased to be incorporated under that law.

Effect of conversion.

146. (1) From the time of the issue of a certificate under section 145(3) –

- (a) the foreign company to which the certificate relates shall be regarded as an IBC incorporated under this Order and capable of exercising all the powers of an IBC accordingly; and
- (b) the foreign company shall no longer be treated as a company incorporated in a jurisdiction outside Brunei Darussalam.

(2) The conversion of a foreign company into an IBC shall not affect its property or liabilities in any way nor shall the conversion affect the continuation of any proceedings which are pending by or against the company at the time of the issue of the certificate under section 145(3).

(3) All shares in a company that were outstanding prior to the issue of a certificate under section 145(3) shall be deemed to have been issued in conformity with the Order.

Striking off of IBC continuing to be incorporated overseas.

- 147.** (1) If the Registrar is satisfied that –
- (a) a foreign company has become an IBC under this Part; and
 - (b) the company continues to be incorporated under the law of a jurisdiction outside Brunei Darussalam,

the Registrar may, in his absolute discretion, on the application of the Authority, the company or any of its members, directors or creditors, make such order as he thinks fit for the removal of the IBC from the register.

(2) An order under this section may be subject to such terms and conditions as the Registrar thinks fit and, except in so far as the Order otherwise provides, on the making of the order, the company shall be treated as never having been an IBC.

PART XII A
DEDICATED CELL COMPANIES

Interpretation.

147A. (1) In this Part, unless the context otherwise requires –

“cell” means a cell created by a DCC for the purpose of segregating and protecting dedicated assets in the manner provided by this Part;

“cellular dividend” means a dividend payable by a DCC in respect of dedicated shares pursuant to the provisions of section 147G(3);

“creditors” includes present, future and contingent creditors and, in relation to a DCC which is a mutual fund or an insurance policy within the meaning of any written law relating to international business, includes respectively an investor and a policy-holder;

“dedicated share capital” means the proceeds of the issue of dedicated shares;

“dedicated shares” means shares created and issued by a DCC in respect of one of its cells pursuant to the provisions of section 147G, the proceeds of the issue of which (the “dedicated share capital”) shall be comprised in the dedicated assets attributable to that cell;

“general assets” of a DCC comprise the assets of the company which are not dedicated assets;

“liability” includes any debt or obligation;

“transact” means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and cognate expressions shall be construed accordingly.

(2) Where any provision of this Part is inconsistent with any other provision of this Order, the former shall prevail:

Provided that –

- (a) where any doubt or dispute arises in relation to any administrative or procedural matter, it may be submitted to, and resolved at the discretion of, the Registrar; and
- (b) where any doubt or dispute arises in relation to any substantive or legal issue arising under or in relation to this Part in relation to this Order, where the Registrar is unable or unwilling to resolve the issue any member, director or registered agent of a DCC, or the Registrar, may apply to the Court for relief; and the Court may make such declaration or order and on such terms as it consider appropriate.

Dedicated cell companies.

147B. (1) Subject to the provisions of this Order and to any relevant modification –

- (a) an IBC may be incorporated as a DCC;
- (b) an existing IBC may be re-constituted as a DCC.

(2) Notwithstanding that a DCC may have created one or more cells pursuant to the provisions of this Part –

- (a) a DCC is a single legal person; and
- (b) the creation by a DCC of a cell does not create, in respect of that cell, a legal person separate from the DCC.

(3) The provisions of this Part shall, in relation to this Order and unless the context requires, apply in relation to a DCC.

Creation of cells.

147C. A DCC may establish one or more cells for the purpose of segregating and protecting dedicated assets in the manner provided by this Order.

Dedicated and general assets.

147D. (1) The assets of a DCC shall be either dedicated assets or general assets.

(2) A DCC shall –

- (a) maintain separate records for dedicated assets and keep the dedicated assets held for each cell separate from dedicated assets held for other such cells and from general assets; and
- (b) arrange proper protection of dedicated assets, both as between cells and in respect of general assets, by way of segregation and clear identification.

(3) The dedicated assets of a cell of a DCC comprise –

- (a) assets represented by the proceeds of dedicated share capital together with surplus and reserves attributable to the cell;

(b) all other assets and property attributable to the cell.

(4) In subsection (3)(a), the expression “reserves” includes retained earnings, capital reserves and share premiums.

(5) The general assets of a DCC comprise the assets of the company which are not dedicated assets.

(6) A DCC may cause or permit dedicated assets and general assets to be held by or through a person (including without limitation a DCC) acting as a nominee or trustee.

(7) Subject to any relevant modification, the duty imposed by subsection (2) is not breached by reason only that the directors of a DCC include directors who are appointed to manage the affairs of a particular cell or cells, or appoint a committee to undertake duties in relation to a particular cell or cells, or cause or permit dedicated assets or general assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (2).

(8) Any director, committee member, administrator or investment manager appointed with respect to duties connected with an identified dedicated cell or cells shall be under a duty to give notice of their respective status in like manner to the duty imposed on a DCC by section 147O, and the provisions of that section in relation to a DCC shall apply in like terms *mutatis mutandis* to any such director, committee member, administrator or investment manager.

Position of creditors.

147E. (1) No creditor shall have any rights other than the rights referred to in, or arising as a consequence of any provision of, this Part.

(2) Subject to express written provision to the contrary, there shall be implied in every transaction entered into by a DCC the following terms –

- (a) that no party shall seek, whether in any action, application or proceedings or otherwise attack, seize, freeze or otherwise exert any legal or equitable claim or right however or wheresoever, to make or attempt to make liable any dedicated assets attributable to any cell of the company in respect of a liability not attributable to that cell;
- (b) that if any party shall succeed contrary to paragraph (a) or by any means whatsoever or wheresoever in making liable any dedicated assets in respect of a liability not attributable to a cell, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any dedicated assets attributable to any cell of the company in respect of a liability not attributable to that cell, that party shall hold those assets or their proceeds on trust for the company in respect of the dedicated cell to which such dedicated assets are so dedicated and shall keep those assets or proceeds separate and identifiable as such trust property.

(3) All assets or sums recovered by a DCC as a result of any such trust as is described in subsection (2)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (2)(b).

(4) Any asset or sum recovered by a DCC pursuant to the implied terms set out in subsection (2)(b) or (2)(c) or by any other means whatsoever or wheresoever in the events referred to in that subsection shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected.

(5) In the event of any dedicated assets attributable to a cell of a DCC being taken in execution in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored or made to the cell affected, the company shall –

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the cell affected; and
- (b) transfer or pay, from the cellular or general assets to which the liability was attributable to the cell affected, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(6) Where under subsection (5)(b) a DCC is obliged to make a transfer or payment from dedicated assets attributable to a cell of the company, and those assets are insufficient, the company shall so far as possible make up the deficiency from its general assets.

(7) This section shall have extra-territorial application.

(8) Any party who wilfully and without colour of right acts in breach of any term implied by subsection (2) is guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year and a fine not exceeding two hundred thousand dollars.

Creditors of dedicated assets.

147F. Without prejudice to the provisions of sections 147E and 147N, dedicated assets attributable to a cell of a DCC –

[S 37/2003]

- (a) shall only be available to the creditors of the company who are creditors in respect of that cell and who shall thereby be entitled, in conformity with the provisions of this Part, to have recourse to the dedicated assets attributable to that cell;
- (b) shall be absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly shall not be entitled to have recourse to the dedicated assets attributable to that cell.

Dedicated shares and share capital.

147G. (1) A DCC may, in respect of any of its cells, create and issue shares (“dedicated shares”) the proceeds of the issue of which (“dedicated share capital”) shall be comprised in the dedicated assets attributable to the cell in respect of which the dedicated shares were issued.

(2) The proceeds of the issue of shares other than dedicated shares created and issued by a DCC shall be comprised in the company's general assets.

(3) A DCC may pay a dividend (a "cellular dividend") in respect of dedicated shares.

(4) Cellular dividends may be paid in respect of dedicated shares by reference only to the dedicated assets and liabilities, or the profits, attributable to the cell in respect of which the dedicated shares were issued; and accordingly, in determining whether or not profits are available for the purpose of paying a cellular dividend, no account need be taken of –

[S 37/2003]

- (a) the profits and losses, or the assets and liabilities, attributable to any other cell of the company; or
- (b) general profits and losses, or assets and liabilities.

Reduction of dedicated share capital.

147H. (1) A DCC may by a 75 per cent resolution of the company or of the holders of dedicated shares in a cell in a DCC effect a reduction of the dedicated share capital –

- (a) where the resolution is passed by the company, in respect of any of the company's cells; or
- (b) where the resolution is passed by the holders of dedicated shares, in respect of the cell in which the dedicated shares are held.

(2) No reduction of dedicated share capital may be made except in accordance with section 43, *mutatis mutandis*, and for such purpose "IBC" shall be deemed to be replaced by "cell" and the company may, so far as is necessary, alter its Memorandum.

(3) Subject to subsection (4), notice of proposed resolution authorising the reduction of dedicated share capital shall be given to –

- (a) the DCC (except where the company is itself the applicant);
- (b) the receiver (if any) of the cell;

- (c) the liquidator (if any) of the company;
- (d) the administrator (if any) of the cell or the company;
- (e) the Authority;
- (f) all holders of dedicated shares of the cell (other than the applicant, in cases where the applicant is the holder of such shares);
- (g) subject to section 43(4), every creditor; and
- (h) such other persons as the Authority may direct,

who shall each be given a reasonable opportunity of making representations to the Authority before the resolution is passed.

(4) The Authority may dispense with the requirement to give notice to any person or body mentioned in subsection (3).

(5) The resolution authorising the reduction of dedicated share capital shall, when filed with the Register with the notice required under section 43 –

- (a) be deemed to be substituted for the corresponding part of the DCC’s Memorandum; and
- (b) have effect as if originally contained therein,

but without prejudice to anything done in accordance with the provisions of the Memorandum before the date of the order. .

(6) Any person mentioned in subsection (3) who believes they would be materially adversely affected by the proposed reduction of capital may apply to the Court for relief, and the Court may refuse or grant relief on such terms as it thinks fit.

(7) If a DCC’s dedicated share capital is reduced, no past or present holder of dedicated shares of the cell in question shall (subject to the following provisions of this section) be liable in respect of any cell share to any call or contribution exceeding the amount of the difference (if any) between the following amount –

- (a) the amount of the cell share as fixed by the order of the Court authorising the reduction of dedicated share capital; and

- (b) the amount paid on the cell share or (if appropriate) the reduced amount deemed to have been paid on it.

- (8) Subsections (9) and (10) apply if –
 - (a) a creditor whose consent is required under this section to the reduction of dedicated share capital has not, without neglect or default on his part, been given written notice by the company that his consent to the reduction is required; and
 - (b) after the reduction of dedicated share capital, the dedicated assets attributable to the cell in question (when account is taken of the company's general assets, unless there are no creditors in respect of that cell entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of the creditors in respect of that cell.

(9) Every person who, at the date of the resolution authorising the reduction of dedicated share capital, was a holder of dedicated shares of the cell in question shall be liable to contribute towards payment of the liability in question an amount not exceeding that which he would have been liable to contribute if the winding-up of the company had commenced on the day before that date.

(10) If the DCC is wound up or if a receivership order is made in respect of the cell of the company in relation to which the order of the Court authorising the reduction of dedicated share capital was made, the Court, on the application of the creditor in question and upon proof of the matters set out in subsection (8)(a), may if it thinks fit settle a list of persons accordingly so liable to contribute, and may make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding-up.

(11) Nothing in subsections (8), (9) and (10) shall affect the rights of the contributories among themselves.

(12) The offences and penalties prescribed in section 43(7) shall, *mutatis mutandis*, apply to this section.

Name and Memorandum of DCC.

147I. (1) The name of a DCC shall, without prejudice to the provisions of section 13, include the expression “Dedicated Cell” or “DCC” or any cognate expression approved in writing by the Authority.

(2) The Memorandum of a DCC shall state that it is a DCC.

(3) A DCC may, in order to comply with subsection (2), alter its Memorandum by special resolution, and the provisions of this Order relating to an alteration of the Memorandum of an IBC shall apply.

(4) Unless and until a DCC has complied with the provisions of this section, it shall be deemed not to be a DCC for the purposes of this Part.

(5) Each cell of a DCC shall have its own distinct name or designation.

Consent of Authority required for DCC.

147J. (1) An IBC may not be incorporated as a DCC, and an existing IBC may not be reconstituted as a DCC, except under the authority of and in accordance with the terms and conditions of the written consent of the Authority, which may prescribe classes or descriptions of IBCs which may be DCCs.

(2) The Authority may, from time to time, in such manner as he thinks fit –

(a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted; and

(b) impose any new term or condition in relation to any such consent.

Application for consent of Authority.

147K. (1) An application for the consent of the Authority for the incorporation of an IBC as a DCC, or for the re-constituting of an existing IBC into a DCC –

- (a) shall be made to the Authority in such form and shall be accompanied by such documents and information, verified in such manner, as the Authority may require, and
- (b) shall be accompanied by such fee as may be prescribed.

(2) A copy of the consent of the Authority shall be filed with the Registrar.

Incorporation of company as DCC.

147L. (1) A registered agent wishing to incorporate or reconstitute an IBC as a DCC shall file the company's Memorandum and Articles or amended Memorandum or Articles under this Part, the provisions of which shall apply accordingly; and such an application shall, subject to such modifications and adaptations as may be specified by the Registrar, be accompanied by –

- (a) a copy of the Authority's consent granted under section 147J(1); and
- (b) all such other documents, consents and information as are required for the registration under Part III or re-constitution under this Part, of the Memorandum and Articles of the IBC.

Liability of DCC.

147M. (1) Subject to the provisions of subsection (2), and save to the extent that the company may have agreed that a liability shall be the liability solely of the company's general assets or of the dedicated assets attributable to a particular cell of the company, where any liability arises which is attributable to a particular cell of a DCC –

- (a) the dedicated assets attributable to that cell shall be primarily liable;
- (b) the company's general assets shall be secondarily liable, provided that the dedicated assets attributable to the relevant cell have been exhausted; and
- (c) the liability shall not be a liability of any dedicated assets not attributable to the relevant cell.

(2) In the case of loss or damage which is attributable to a particular cell of a DCC and which is caused by fraud, the loss or damage shall be the liability solely of the company's general assets, but without prejudice to any liability of any person other than the company:

Provided that the fraud referred to in this subsection does not include the fraud of any person making a claim against the company or any of its assets or of that person's servants, employees, officers or agents.

(3) Any liability not attributable to a particular cell of a DCC shall be the liability solely of the company's non dedicated assets.

(4) Notwithstanding the foregoing provisions of this section –

(a) the liabilities under subsection (1)(a) of the dedicated assets attributable to a particular cell of a DCC shall abate rateably until the value of the aggregate liabilities equals the value of those assets:

Provided that the provisions of this paragraph shall be disregarded in assessing the existence and extent of any secondary liability under subsection (1)(b);

(b) the liabilities of the company's general assets shall abate rateably until the value of the aggregate liabilities equals the value of those assets:

Provided that the provisions of this paragraph shall not apply in any situation in which any of the liabilities of the company's general assets arises from fraud or by reason of a special agreement such as is referred to in subsection (1).

(5) This section shall have extra-territorial application.

Disputes as to liability attributable to cells.

147N. (1) In the event of any dispute as to –

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether any creditor is or is not a creditor in respect of a particular cell;
- (c) whether any liability is or is not attributable to a particular cell;
- (d) the amount to which any liability is limited,

the Court, on the application of the DCC and without prejudice to any other right or remedy of any person, may make a declaration in respect of the matter in dispute.

- (2) The Court, on hearing an application for a declaration under subsection (1) –
 - (a) may direct that any person shall be heard on the application;
 - (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
 - (c) may make the declaration subject to such terms and conditions as it thinks fit;
 - (d) may direct that the declaration shall be binding upon such persons as may be specified.

DCC to give notice of status.

1470. (1) A DCC shall –

- (a) inform any person with whom it transacts that it is a DCC; and
[S 37/2003]
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell.

(2) If, in contravention of subsection (1), a DCC –

- (a) fails to inform a person that he is transacting with a DCC, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a DCC; or
- (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with,

then, in either such case –

- (i) the directors shall (notwithstanding any provision to the contrary in the company's Articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and

- (ii) the directors shall have a right of indemnity against the general assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the provisions of subsection (2)(i), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because –

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith;
- (b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability; or
- (c) his office was of such a nature that he owed no duty to the cell concerned, and he had complied with section 147D(8).

(4) Where, pursuant to the provisions of subsection (3), the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the cellular or general assets of the DCC as may be specified in the order.

(5) Any provision in the articles of a DCC, and any other contractual provision under which the DCC may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against general assets by virtue of subsection (2)(ii), shall be void.

Attribution of general assets and liabilities.

147P. (1) Liabilities of a DCC not otherwise attributable to any of its cells shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of or acquired by a DCC not otherwise attributable to any cell shall be applied to and comprised in the company's general assets.

Liquidation of DCC.

147Q. (1) Notwithstanding any written law or rule of law to the contrary, in the liquidation of a DCC the liquidator –

- (a) shall be bound to deal with the company's assets in accordance with the requirements set out in paragraphs (a) and (b) of section 147D(2);
- (b) in discharge of the claims of creditors of the DCC, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Section 88 of the Insolvency Order, 2016 (which provides that subject to preferential payments the property of a company in a winding up shall be applied in satisfaction of its liabilities *pari passu*) shall be modified and shall apply in relation to dedicated cell companies subject to the provisions of this Part.

[S 1/2016]

Transfer of dedicated assets.

147R. (1) Subject to the provisions of subsection (3), dedicated assets of a DCC, but not the general assets of a DCC, may be transferred to another person.

(2) A transfer, pursuant to subsection (1), of dedicated assets attributable to a cell of a DCC shall not of itself entitle creditors of that company to have recourse to the assets of the person to whom the dedicated assets were transferred.

(3) No transfer of the dedicated assets attributable to a cell of a DCC may be made except under the authority of, and in accordance with the terms and conditions of, a 75 per cent resolution made on the recommendation of a directors' resolution.

(4) The directors shall not make a recommendation in accordance with subsection 3 in relation to a cell of a DCC unless they are satisfied –

- (a) (i) that the creditors of the company entitled to have recourse to the dedicated assets attributable to the cell have consented to the transfer; or
- (ii) that those creditors would not be unfairly prejudiced by the transfer; and
- (b) that the Authority has given his prior written consent to the transfer.

(5) The Authority may attach such conditions as he thinks fit to a consent given under subsection (4)(b), including conditions as to the discharging of claims of creditors entitled to have recourse to the dedicated assets attributable to the cell in relation to which the consent is sought.

(6) The Authority may consent to a transfer of dedicated assets notwithstanding that –

- (a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding-up;
- (b) a receivership order has been made in respect of the cell or any other cell of the company;
- (c) an administration order has been made in respect of the cell, the company or any other cell thereof.

(7) The provisions of this section are without prejudice to any power of a DCC lawfully to make payments or transfers from the dedicated assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Part, to have recourse to those dedicated assets.

(8) This section shall not apply where the directors of DCC make or change any investment of dedicated assets or otherwise make payments or transfers from dedicated assets in the ordinary course of the company's business or transactions.

Inspection, supervisory management, etc., of DCC.

147S. The provisions of Part XIII of this Order shall apply to a DCC which is an IBC; and where the context permits or requires shall apply, *mutatis mutandis*, in relation to designated cells.

PART XIII
INSPECTION, SUPERVISORY MANAGEMENT, WINDING-UP
AND STRIKING OFF

Inspection and supervisory management.

- 148.** (1) The provisions of –
- (a) sections 135A to 135M of the Companies Act (Chapter 39) (inspections on behalf of the Minister of Finance); and
 - (b) Parts IV and X of the Insolvency Order, 2016 and the Second Schedule to that Order (executive and judicial management), apply, subject to subsection (2), in relation to an IBC as they apply in relation to a domestic company.

[S 1/2016]

- (2) In their application to an IBC, the provisions of the Companies Act (Chapter 39) and Insolvency Order, 2016 referred to in subsection (1) shall have effect as if –

[S 1/2016]

- (a) any reference to a company included a reference to an IBC; and
- (b) any reference to a shareholder were a reference to a member, within the meaning of this Order.

Winding-up of IBCs.

- 149.** (1) Subject to the following provisions of this section, the provisions of Parts III (Receivers and Managers) and Parts V and VI (Winding Up) of the Insolvency Order, 2016 shall apply to the winding-up of an IBC as they apply to the winding-up of a domestic company.

[S 1/2016]

(2) Where the Memorandum or Articles of an IBC specify a time or an event for the termination of the existence of the IBC, the winding-up and dissolution of the IBC shall be initiated by a resolution of the directors passed after the expiry of that time or, as the case may be, the happening of that event.

(3) In their application to an IBC, Parts III, V and VI of the Insolvency Order, 2016 shall have effect subject to the modifications in the Schedule to this Order.

[S 1/2016]

Striking off for breach of requirements or condition.

150. (1) Where the Registrar has reasonable cause to believe that an IBC no longer satisfies the requirements of section 6(1) or has failed to comply with the condition in section 6(4)(a), he shall serve notice on the IBC that it is liable to be struck off the register in accordance with this section.

(2) If, within the thirty days following the date of service of a notice under subsection (1), the Registrar has not received a reply indicating compliance he shall serve on the IBC a notice (a “notice of intent”), accompanied by a copy of the notice originally served under subsection (1), informing the IBC that, if a reply is not received within thirty days following the service of the notice of intent, a notice of proposed striking off will be published in the *Gazette*.

(3) If the Registrar –

- (a) does not receive a reply to a notice of intent; or
- (b) following service of a notice under subsection (1) or a notice of intent, receives from the IBC a response to the effect that it no longer satisfies the requirements of section 6(1), or has not complied with the condition in section 6(4)(a),

the Registrar shall publish a notice in the *Gazette* that the IBC will be struck off unless the IBC or another person satisfies the Registrar that the IBC should not be struck off.

(4) Unless, within the period of ninety days immediately following the date of publication of a notice under subsection (3), the Registrar becomes satisfied that the IBC concerned should not be struck off, he shall, at the expiry of that period, proceed to strike the IBC off and shall publish a notice in the *Gazette* of the striking off.

(5) The striking off of an IBC under this section shall not be affected by any failure on the part of the Registrar to publish a notice in the *Gazette*.

Striking off for failure to pay prescribed fees.

151. (1) If in any year an IBC fails to pay a prescribed renewal fee as required by section 6(4)(b) and the failure continues beyond the period of two months beginning on the due date, then, subject to subsection (4), the Registrar shall, within the next succeeding two months serve on the registered agent of the IBC, a written notice that the IBC will be struck off if that fee is not paid within such period (being not less than thirty days) from the date of the notice as is specified therein.

(2) If, following service of a notice under subsection (1) on the registered agent of an IBC, the prescribed renewal fee concerned is not paid within the period specified in the notice, the Registrar shall strike the IBC off the register.

(3) Where the Registrar has struck an IBC off the register under subsection (2), he shall –

- (a) within one month of the striking off give notice in writing to the IBC's registered agent that the IBC has been struck off; and
- (b) within two months of the striking off publish notice in the *Gazette* of the striking off.

(4) The striking off of an IBC under this section shall not be affected by any failure on the part of the Registrar to give notice to the registered agent or to publish a notice in the *Gazette*.

(5) This section does not apply to an IBC which is in the process of being wound up and dissolved.

Restoration to register.

152. (1) If an IBC has been struck off the register under section 150, the former IBC or a creditor, member or liquidator of it may apply to the Court to have the IBC restored to the register.

(2) If, on an application under subsection (1), the Court is satisfied that –

- (a) the IBC did satisfy the requirements in section 6(1) or, as the case may be, had not failed to comply with the condition in section 6(4)(a); and
- (b) it would be fair and reasonable for the IBC to be restored to the register,

the Court may make order that, on payment of all fees due (whether under section 6(4)(b) or otherwise) but without any increase on account of late payment, the Registrar shall restore the IBC to the register.

(3) If an IBC has been struck off the register under section 151, then, within the ten years immediately following the date of the striking off and on payment of the prescribed fee, the former IBC or a creditor, member or liquidator of it may apply to the Registrar to have the IBC restored to the register.

(4) If an application is made under subsection (3), then, upon payment to the Registrar of all fees due (whether under section 6(4)(b) or otherwise), including any increases on account of late payment, the Registrar shall restore the IBC to the Register.

(5) If an IBC has been struck off the register under section 62(6), the former IBC or a creditor member or liquidator of it may, on payment of the prescribed fee, apply to the Registrar to have the IBC restored to the register.

(6) If, on an application under subsection (5), the Registrar is satisfied that –

- (a) another registered agent has agreed to act as agent for the IBC; and
- (b) it would be fair and reasonable for the IBC to be restored to the register,

the Registrar may restore the IBC to the register if the conditions in subsection (7) are fulfilled.

- (7) The conditions referred to in subsection (6) are that –
- (a) the applicant pays all fees due (whether under section 6(4)(b) or otherwise) but without any increase on account of late payment; and
 - (b) there is registered with the Registrar a copy of a resolution amending the Memorandum so as to change its registered agent to the agent referred to in subsection (6)(a).

(8) Where an IBC is restored to the register under any provision of this section, the IBC shall be deemed never to have been struck off the register.

Effect of striking off.

153. (1) Where an IBC has been struck off the register, it shall remain responsible (as a body corporate) for all its claims, debts, liabilities and obligations; and in the following provisions of this section “the company” means the body which, before being struck off was an IBC.

(2) Where an IBC has been struck off the register, the striking off shall not affect the liability of any of its members, directors, officers or agents, but the company and its directors, members, liquidators and receivers 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 former IBC; or
- (c) act in any way with respect to the affairs of the former IBC.

(3) Notwithstanding subsection (2), where an IBC has been struck off the register, the company or a director, member, liquidator or receiver of the company may –

- (a) apply for restoration of the IBC to the register;
- (b) continue to defend proceedings that were commenced prior to the date of the striking off; and

- (c) continue to carry on legal proceedings that were instituted on behalf of the IBC prior to the date of the striking off.
- (4) The fact that an IBC has been struck off 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 judgment or execution; or
 - (c) the appointment by the Court of a liquidator for the company under section 103.

Appointment by Court of liquidator.

154. (1) For the purposes of winding-up a company which, before being struck off, was an IBC, the Court may appoint a person to be the liquidator of the company.

(2) For the purposes of this Part, the appointment of a liquidator under this section operates as an order to restore the name of the company to the register (as an IBC).

Dissolution of IBC struck off.

155. (1) If an IBC has been struck off the register and remains so struck off for a period of at least three years, then, subject to subsection (3), it shall be deemed to be dissolved at the expiry of that period.

(2) If the Registrar considers that it is in the public interest that a company which was an IBC to which subsection (1) would otherwise apply should be wound up in accordance with section 149, he may apply to the Court to have the company wound up accordingly.

(3) If, on an application under subsection (2), the Court orders that the company be wound up, subsection (1) shall not apply and, if the Court thinks fit, it may exercise its power under section 154.

**MIGRATION OF IBC TO COMPANY INCORPORATED UNDER COMPANIES
ACT**

Interpretation of this Part

155A. For the purposes of this Part, “Registrar” means the Registrar of Companies appointed under section 288 of the Companies Act, and includes any Deputy Registrar or Assistant Registrar of Companies.

Migration of IBC to company incorporated under Chapter 39

155B. (1) Subject to subsection (2), an IBC may migrate to become a company incorporated under the Companies Act.

- (2) An IBC may not migrate under this Part if –
- (a) the IBC is being wound up, is in liquidation or has been declared insolvent;
 - (b) a receiver or administrator has been appointed, whether by the Court or otherwise, in relation to any property of the IBC;
 - (c) the IBC has entered into a compromise or arrangement with a creditor and the compromise or arrangement is in force; or
 - (d) an application, which has not been disposed of, has been made to the Court –
 - (i) to put the IBC into liquidation, to wind it up or to have it declared insolvent;
 - (ii) for the approval of a compromise or arrangement between the IBC and a creditor; or
 - (iii) for the appointment of a receiver or administrator in relation to any property of the IBC.

(3) An application by an IBC to migrate under this Part shall be made to the Registrar within 6 months from the date of commencement of this Order or such longer period as approved by the Authority, on payment of a fee of \$750 and accompanied by the following –

(a) a certified copy of its certificate of incorporation issued under section 11(3);

(b) a copy of the Memorandum and Articles complying with subsections (4) and (5);

(c) evidence satisfactory to the Registrar that the application to be so migrated and the Memorandum and Articles have been approved –

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

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

(d) evidence satisfactory to the Registrar that the IBC is not disqualified from migration under subsection (2).

(4) Subject to subsection (5), the Memorandum of an IBC to migrate under this Part shall include the following –

(a) the name of the IBC;

(b) whether the IBC is –

(i) a company limited by shares;

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

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

(iv) an unlimited company that is not authorised to issue shares; or

(v) an unlimited company that is authorised to issue shares;

(c) the address of the first registered office of the IBC;

(d) in the case of a company limited by shares or otherwise authorised to issue shares –

- (i) the maximum number of shares that the IBC is authorised to issue or that it is authorised to issue an unlimited number of shares; and
- (ii) the classes of shares that the IBC is authorised to issue and, if it is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;

(e) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the IBC is liable to contribute to its assets in the event that a liquidator is appointed under the Insolvency Order, 2016 (S 1/2016), whilst he is a member; and

(f) such other information and documents, if any, as the Registrar may require, either generally or in relation to a particular application.

(5) The Memorandum of an IBC applying to migrate under this Part shall, in addition to the matters required to be stated under subsection (4) –

(a) state the names and addresses of the directors of the IBC and of persons (if different) who are to be its directors after the migration under this Part; and

(b) be accompanied by a statement signed by each of the persons who is to be a director of the IBC after such migration consenting to being such a director.

(6) The Memorandum of an IBC applying to migrate under this Part shall be signed by, or on behalf of, the persons who have approved the Memorandum and Articles under subsection (3)(c).

Registration of IBC as company incorporated under Chapter 39

155C. (1) If the Registrar is satisfied that the requirements of this Part in respect of the migration have been complied with by an IBC, on receipt of the documents specified in section 155B(3) and (5)(b), the Registrar shall –

- (a) register the documents; and
- (b) issue a certificate of incorporation,

(2) A certificate issued by the Registrar to an IBC under subsection (1) is conclusive evidence that –

- (a) all the requirements of this Part as to migration have been complied with by the IBC; and
- (b) the IBC is a company incorporated under the Companies Act under the name designated in its memorandum on the date specified in the certificate.

(3) Notwithstanding the provisions of section 155B and this section, the Registrar may refuse to accept an application by an IBC to migrate under this Part if he is of the opinion that it would be contrary to the public interest to do so.

Effect of migration

155D. (1) When an IBC has migrated under this Part –

- (a) the Companies Act applies to the IBC as if it had been incorporated under section 16 of that Act on the approved date for migration;
- (b) the IBC is capable of exercising all the powers of a company incorporated under the Companies Act;
- (c) the Memorandum and Articles approved under section 155B(3)(c) become the Memorandum and Articles of the IBC; and
- (d) the IBC is forthwith removed from the register maintained under this Order.

(2) The migration of an IBC under this Part shall not affect its property or liabilities in any way nor shall the migration affect the continuation of any proceedings which are pending by or against the IBC.

(3) Without limiting subsection (2) –

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

(b) no proceedings, whether civil or criminal, pending immediately before 25th December, 2017 or such other date as determined by the Authority by or against the IBC, or against any member, director, officer or agent thereof, are abated or discontinued by its migration as a company under this Part, but the proceedings may be enforced, prosecuted, settled or compromised by or against the IBC or against the member, director, officer or agent thereof, as the case may be.

(4) All shares in an IBC migrated under this Part that were outstanding before migration is deemed to have been issued in conformity with the Companies Act.

PART XIV

MISCELLANEOUS AND GENERAL

Migration of IBC to overseas jurisdiction.

156. (1) In accordance with the provisions of this section, an IBC may be removed from the register for the purposes of becoming incorporated under the law of a jurisdiction outside Brunei Darussalam (in this section referred to as “the overseas law”).

(2) A removal and transfer falling within subsection (1) is in this section referred to as a “migration”; and a migration shall not take place unless –

(a) it is approved by a majority of the members of the IBC;

[S 53/2017]

(b) *(Deleted by S 53/2017).*

(c) it is permitted under the overseas law and the requirements of the overseas law are complied with; and

(d) immediately before the IBC becomes incorporated under the overseas law, the IBC will, applying the test in section 124(3), fulfil the solvency conditions at that time.

(3) Without prejudice to subsection (2), an IBC may not take part in a migration if –

- (a) the IBC is being wound up, is in liquidation or has been declared insolvent;
- (b) a receiver or administrator has been appointed, whether by the Court or otherwise, in relation to any property of the IBC;
- (c) the IBC has entered into a compromise or arrangement with a creditor and the compromise or arrangement is in force; or
- (d) an application, which has not been disposed of, has been made to the Court –
 - (i) to put the IBC into liquidation, to wind it up or to have it declared insolvent;
 - (ii) for the approval of a compromise or arrangement between the company and a creditor; or
 - (iii) for the appointment of a receiver or administrator in relation to any property of the IBC.

(4) Within thirty days of a migration, the registered agent of the IBC concerned shall deliver to the Registrar, an affidavit made by him to the effect that the IBC has become incorporated under the law of the overseas jurisdiction concerned.

[S 53/2017]

(5) The Registrar shall retain and register an affidavit delivered to him under subsection (4) and, as soon as reasonably practicable thereafter –

- (a) shall remove the IBC from the register; and
- (b) shall publish notice in the *Gazette* stating that, pursuant to the provisions of this section, the IBC has been so removed for the purposes of enabling it to become incorporated under the law of another jurisdiction (naming that jurisdiction in the notice).

(6) Where a migration takes place –

- (a) the former IBC shall continue to be responsible for all claims, debts, liabilities and obligations that existed prior to the migration;

- (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the former IBC or against any director, officer, member or agent of the former IBC shall be released or otherwise affected by the migration; and
- (c) no proceedings, whether civil or criminal, pending by or against the former IBC or against any director, officer, member or agent of the former IBC shall be abated, discontinued or otherwise affected by or by reason of the migration.

157. *(Repealed by S 53/2017).*

Power to issue directions [S 53/2017]

157A. (1) The Authority may issue such directions to an IBC as it may consider desirable for the purposes of carrying this Order into effect.

(2) An IBC that fails to comply with any direction issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

Offences in relation to false statements.

158. (1) A person is guilty of an offence if, in or in connection with any application, register or other document required or made for the purposes of this Order, or in compliance or purported compliance with any requirement of this Order or otherwise for the purposes of this Order, –

- (a) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

- (d) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding two years and a fine not exceeding one hundred thousand dollars.

Offences by bodies corporate.

159. Where an offence under this Order committed by an IBC or other body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in that capacity, or
(b) any other person who holds a controlling interest in that body,

he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Office of the Registrar; Disclosure of Name and Agent.

[S 37/2003]

160. (1) For the purposes of the registration of IBCs under this Order there shall be an office of the Registrar at such place as the Authority directs.

[S 103/2010]

(2) Notwithstanding any other provision of this Order, the Registrar may disclose to any person the fact that an IBC or FIC is incorporated or registered under this Order, and the name of the registered agent appearing in the records of such IBC or FIC.

[S 37/2003]

Service, etc., of documents on Registrar.

161. (1) Any document to be served on the Registrar may be served, delivered or sent by leaving it at or by sending it to the Registrar's office, duly addressed to the Registrar.

[S 37/2003]

(2) Any such document as is referred to in subsection (1) shall not be regarded as properly served, delivered or sent unless the text which is served, delivered or sent is in a form which is capable of being read by the human eye.

Inspection, production and evidence of documents kept by Registrar.

162. (1) Notwithstanding the provisions of subsections (1) and (2) of section 4, on payment to the Registrar of the prescribed fee, any officer, member, debenture holder, director or liquidator of an IBC or foreign international company or the registered agent for the time being of the IBC or the foreign international company, or any other person with the written permission of such officer, member, debenture holder, director or liquidator or who can demonstrate to the Registrar that he has a good and cogent reason arising out of any written law for doing so (not being a reason inconsistent with the objectives of this Order) or who is acting pursuant to an order of the Court, may, subject to this Order and during normal business hours –

- (a) inspect the registers and other documents kept by the Registrar; and
- (b) make copies of or of extracts from those registers and documents.

[S 37/2003]

(2) On request to the Registrar and on payment to him of the prescribed fee, the Registrar shall furnish any person of the class of persons or having the consent respectively mentioned in subsection (1) with a copy, certified by the Registrar, of the certificate of the incorporation of an IBC or of any other document or part thereof, but save as aforesaid no document filed by the Registrar in respect of a company shall be available for inspection or copying.

[S 37/2003]

(3) *(Repealed by S 37/2003).*

(4) Unless the contrary is proved, a document purporting to be certified under the hand of the Registrar as mentioned in subsection (2) shall be taken to be so certified.

(5) If any register or other document kept by the Registrar is in a form which cannot be read by the human eye, the Registrar must provide a suitable means for an inspection under subsection (1) and must provide legible copies under subsection (2).

(6) A copy of or extract from any document kept and registered by the Registrar under this Order, certified to be a true copy under the hand of the Registrar shall in all legal proceedings be admissible in evidence in like manner and to the like extent as the original.

Certificate of good standing.

163. (1) Upon request by a registered agent and on payment of the prescribed fee, the Registrar shall issue under his hand and seal a certificate certifying that an IBC or foreign international company is of good standing in Brunei Darussalam if he is satisfied –

[S 37/2003]

- (a) that the name of the IBC is on the Register; and
- (b) that the IBC has paid all fees and other sums due and payable under this Order.

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

- (a) the IBC has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the Court has approved a compromise or arrangement under section 114 or the IBC is in the process of being wound up or dissolved;
- (c) proceedings have been initiated to strike the IBC off the Register.

Regulations.

164. (1) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations –

[S 103/2010]

- (a) specifying duties to be performed by the Registrar for the purposes of this Order;
- (b) generally with regard to the procedure for, and regulation of, registration and matters incidental thereto;
- (c) prescribing the fees and any other matters which, under this Order, are to be or may be prescribed.

(2) In exercise of the powers conferred by this section, different provision may be made for different cases and for different circumstances and, without prejudice to the generality, different levels of fees may be prescribed under paragraph (c) according to whether the fees are paid on or before, or at a time after, the due date.

Fees and penalties recoverable as civil debts.

[S 37/2003]

165. (1) Any fee or penalty payable under this Order which remains unpaid for more than thirty days after demand for payment is made by the Registrar shall be recoverable as a civil debt due to the Government.

[S 37/2003]

(2) Notwithstanding that an IBC or foreign international company may have been struck off the register, the IBC or foreign international company continues to be liable for any fees or penalties which had previously become payable under this Order; and any such fees or penalties shall have priority over all other claims against the assets of the IBC.

[S 37/2003]

Power to amend Second Schedule.

166. The Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order notified in the *Gazette*, amend the Second Schedule.

[S 37/2003; S 103/2010]

Application of Insolvency Order, 2016 to IBCs.

[S 1/2016]

167. Parts III, V and VI of the Insolvency Order, 2016 shall apply to IBCs with the modifications in the First Schedule.

[S 1/2016]

General powers of exemption. *[S 37/2003]*

168. (1) The Authority may at any time in writing exempt any person or business or class of persons or class of business from any of the provisions of this Order.

[S 103/2010]

(2) Any exemption made under subsection (1) may contain different provisions for different classes of persons or of business, or international business, or with respect to any provisions of this Order, or for different purposes of the same provision.

FIRST SCHEDULE

(section 167)

MODIFICATIONS OF PARTS III, V AND VI OF INSOLVENCY ORDER, 2016 IN THEIR APPLICATION TO IBCS

[S 37/2003; S 1/2016]

General modifications.

1. (1) For any reference to the Registrar (within the meaning of the Companies Act) (Chapter 39) there shall be substituted a reference to the Registrar (within the meaning of this Order).

(2) Any reference to a company or a company registered in Brunei Darussalam shall be taken to include a reference to an IBC, and where the context allows, a foreign international company.

(3) The term “member” shall be construed as referring to a member within the meaning of this Order.

(4) Any expression which is defined for the purposes of this Order and which (by virtue of any modification made by the following provisions of this Schedule) is used in Parts V and VI of the Insolvency Order, 2016 has in those Parts the same meaning as in this Order.

[S 1/2016]

Specific modifications.

2. In section 99 (Circumstances in which company may be wound up by Court), paragraph (d) is omitted.

[S 1/2016]

3. In section 163 (Definition of inability to pay debts) at the end of paragraph (c), there shall be added the following new paragraph –

“or (d) it is proved to the satisfaction of the Court that an IBC is unable to pay its debts as they fall due.”.

4. In section 101 (Application for winding up), in subsection (2), paragraph (a) is omitted.
[S 1/2016]

5. (Deleted by S 1/2016).

6. (1) In section 123 (power to stay winding-up) immediately after subsection (1) there shall be inserted the following subsection –

[S 1/2016]

“(1A) The Court may, at any time after an order for winding-up, on the application either of the liquidator or a creditor, and having regard to the wishes of the creditors and contributories, make an order directing that the winding-up by the Court shall be directed as a creditors' voluntary winding-up.”.

(2) After subsection (2) of that section there shall be added the following new subsection –

“(3) Where an order is made under this section, a copy thereof shall be sent for registration to the Registrar by the IBC or in such other manner as may be prescribed.”.

7. [S 103/2010] ; (Deleted by S 1/2016).

8. (1) In section 111, for subsections (1) to (3) there shall be substituted the following new subsections –

[S 1/2016]

“(1) Where an order has been made for the winding-up of an IBC by the Court, the Official Receiver may, at any time before the dissolution of the IBC, apply to the Court for the public examination of –

- (a) any person who is or has been an officer of the IBC;
- (b) the registered agent of the IBC;
- (c) any person who has acted as liquidator or administrator of the IBC or as receiver or manager of any of its property; or

(d) any other person who is or has been concerned, or has taken part, in the promotion, formation or management of the IBC.

(1A) Unless the Court orders otherwise, the Official Receiver shall make an application under subsection (1) if requested to do so by one-half in value of the IBC's creditors or three-quarters in value of the IBC's contributories.

(1B) On an application under subsection (1), the Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court.”.

(2) [S 37/2003];(Deleted by S 1/2016).

9. For section 71 (statutory declaration of solvency) there shall be substituted the following section –

[S 1/2016]

“Duty of liquidator to call creditors”

“71. (1) Where it is proposed to wind-up an IBC voluntarily, the directors, by not less than a majority, may at a meeting of directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the IBC and that, having done so, they have formed the opinion that the IBC will be able to pay its debts in full, together with interest at the rate for the time being prescribed, within such period, not exceeding twelve months from the commencement of the winding-up, as may be specified in the declaration.

[S 1/2016]

(2) A declaration under subsection (1) has no effect for the purposes of this Act unless –

(a) it is made within the five weeks immediately preceding the date of the resolution for winding-up, or on that date but before the passing of the resolution; and

(b) it embodies a statement of the IBC's assets and; liabilities as at the latest practicable date before the making of the declaration.

(3) A declaration under subsection (1) shall be delivered to the Registrar not later than the fifteenth day after the passing of the resolution for winding-up.”.

10. Immediately after section 91 there shall be inserted the following new section –

[S 1/2016]

“Alternative provisions as to annual and final meetings in case of insolvency.

91A. (1) If, in the case of a winding-up of an IBC, the liquidator is at any time of the opinion that the IBC will not be able to pay its debts in full within the period stated in the declaration under section 71, he shall forthwith summon a meeting of creditors and shall lay before the meeting a statement of the assets and liabilities of the IBC.

[S 1/2016]

(2) Unless the meeting of creditors resolves that the winding-up shall continue as a members' voluntary winding-up, the winding-up shall as from the date when the liquidator calls the meeting of creditors become a creditors' voluntary winding-up; and the meeting of creditors shall have the same powers as a meeting of creditors held under section 82.

[S 1/2016]

(3) If the liquidator fails to comply with this section, he shall be guilty of an offence: Penalty, a fine of one thousand dollars.”.

11. Immediately after section 75 there shall be inserted the following new section –

[S 1/2016]

“Liabilities and rights of certain fraudulently preferred persons.

75A. Where section 91A has effect, sections 86 and 87 apply to the winding-up to the exclusion of sections 74(4), 74(5) and 75, as if the winding-up were a creditors' voluntary winding-up; but, unless the meeting under section 91A is held more than three months before the end of the first year from the commencement of the winding-up, the liquidator shall not be required to summon a meeting of creditors under section 86 at the end of that year.”.

[S 1/2016]

12. In section 147 (Preferential payments), in subsection (1), at the end of paragraph (b) there shall be inserted the following new paragraph –

[S 1/2016]

“(ba) all fees and charges which, within 12 months preceding the relevant date, have become due to any public body or public officer under the provisions of any written law;”.

[S 1/2016]

13. (Deleted by S 1/2016).

14. (1) In section 155 (Offences by officers of companies in liquidation), in subsection (1) immediately after paragraph (d) there shall be inserted the following new paragraphs –

[S 1/2016]

“(da) makes a statutory declaration under section 71(1) without reasonable grounds for the opinion that the IBC will be able to pay its debts as stated in that subsection;

[S 1/2016]

(fb) fails to deliver a declaration to the Registrar as required by section 71(3).

[S 1/2016]

(2) Immediately after subsection (1) of that section there shall be inserted the following subsection –

“(1A) If an IBC is wound up in pursuance of a resolution passed within five weeks after the making of a declaration under section 71(1) and its debts are not paid or provided for in full within the period specified, then, for the purposes of subsection (1)(da), it shall be presumed, unless the contrary is shown, that a director making the declaration did not have reasonable ground for his opinion.”.

[S 1/2016]

(3) (Deleted by S 1/2016).

15. (Deleted by S 1/2016).

SECOND SCHEDULE

(sections 5, 8)

MEMORANDUM OF ASSOCIATION

COMPANY LIMITED BY SHARES

1. The name of the company is
2. The registered office of the company will be situated at

Brunei Darussalam.
3. The objects or purposes of the company are, subject to the prohibitions contained in section 6(1) of the International Business Companies Order, 2000, to engage in any act or activity that is not prohibited under any law for the time being in force in Brunei Darussalam.
4. The liability of the members is limited.
5. The aggregate authorised share capital of the company is *(amount and currency or currencies in words and figures)*
divided into *(number and class of shares)* shares of *(amount and currency)*
par value each, **with authority hereby granted to the director(s)** from time to time to fix by resolution any such designations, powers, preferences, rights, qualifications, limitations or restrictions as are not fixed by this Memorandum but subject to the terms and conditions hereof.

This Memorandum, pursuant to section 8(6) of the Order, upon registration shall bind the Company and its members as provided in that subsection.

(name of licensed registered agent)

.....
.....
of *(address)*.....
.....

a company duly licensed pursuant to the provisions of the Registered Agents and Trustees Licensing Order, 2000, being desirous of forming a company, in pursuance of this memorandum of association and the Order,

[S 37/2003]

HEREBY SUBSCRIBES for _____ shares
of _____ each in the capital of the company.

Dated this _____ day of _____ 20.....

SIGNED for and on behalf of

(Name of registered agent)

By *(name of signing officer)*

In the presence of:

.....
Director/duly authorised officer

Witness:

Occupation:

Address:

MEMORANDUM OF ASSOCIATION

(sections 5, 8)

COMPANY LIMITED BY GUARANTEE

1. The name of the company is
2. The registered office of the company will be situated at

Brunei Darussalam.
3. The objects or purposes of the company are, subject to the prohibitions contained in section 6(1) of the International Business Companies Order, 2000, to engage in any act or activity that is not prohibited under any law for the time being in force in Brunei Darussalam.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding-up, and for the adjustment of the rights of contributories among themselves, such amount as may be required not exceeding *(amount and currency or currencies in words and figures)*

This Memorandum, pursuant to section 8(6) of the Order, upon registration shall bind the Company and its members as provided in that subsection.

(name of licensed registered agent)

.....
.....
of *(address)*

a company duly licensed pursuant to the provisions of the Registered Agents and Trustees Licensing Order, 2000, being desirous of forming a company limited by guarantee, in pursuance of this memorandum of association and the Order,

[S 37/2003]

HEREBY executes this Memorandum this day of 20

SIGNED for and on behalf of

(Name of registered agent)

By *(name of signing officer)*

In the presence of:

.....

Director/duly authorised officer

Witness:

Occupation:

Address:

MEMORANDUM OF ASSOCIATION

(sections 5, 8)

COMPANY LIMITED BY SHARES AND GUARANTEE

1. The name of the company is
2. The registered office of the company will be situated at

Brunei Darussalam.
3. The objects or purposes of the company are, subject to the prohibitions contained in section 6(1) of the International Business Companies Order, 2000, to engage in any act or activity that is not prohibited under any law for the time being in force in Brunei Darussalam.
4. The liability of the members is limited.
5. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding-up the same and for the adjustment of the rights of contributories amongst themselves, such amount as may be required not exceeding *(amount and currency)*
6. The aggregate authorised share capital of the company is *(amount and currency or currencies in words and figures)*
divided into *(number and class of shares)* shares of *(amount and currency)*
par value each, **with authority hereby granted to the director(s)** from time to time to fix by resolution any such designations, powers, preferences, rights, qualifications, limitations or restrictions as are not fixed by this Memorandum but subject to the terms and conditions hereof.

This Memorandum, pursuant to section 8(6) of the Order, upon registration shall bind the Company and its members as provided in that subsection.

(name of licensed registered agent)

.....
.....

of (*address*)
.....

a company duly licensed pursuant to the provisions of the Registered Agents and Trustees Licensing Order, 2000, being desirous of forming a company limited by shares and guarantee, in pursuance of this memorandum of association and the Order,

[S 37/2003]

HEREBY SUBSCRIBES for shares
of each in the capital of the company.

SIGNED for and on behalf of

(*Name of registered agent*)

By (*name of signing officer*)

.....

In the presence of:

Director/Authorised Officer

Witness:

Occupation:

Address:

**ARTICLES OF ASSOCIATION
OF
COMPANY LIMITED BY SHARES**

PRELIMINARY.

1. In these regulations –

“the Order” means the International Business Companies Order, 2000.

When any provision of the Order is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, “section” refers to a section of the Order, and expressions defined in the Order or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meaning so defined.

SHARES.

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the directors or the company may from time to time determine, and any preference share may be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be one person at least holding or representing by proxy one-

third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding fifty dollars, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions the provision of financial assistance and the purchase by the company of its own shares, which are hereby expressly permitted as mentioned in sections 53 and 54.

LIEN.

7. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing,

stating and demanding, payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES.

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five dollars per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a

share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest or a surcharge at such rate as may be agreed upon between the member paying the sum in advance and the directors.

TRANSFER AND TRANSMISSION OF SHARES.

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve –

I, A, B., of _____ in consideration of
the _____
sum of \$ _____ paid to me by C. D. _____ of
(hereinafter called the said transferee) do
hereby transfer to the said transferee the share [or shares]
numbered _____ to _____ in the undertaking
called _____
_____, to hold unto the said transferee, subject
to the several conditions on which I hold the same: and I, the said transferee, do hereby
agree to take the said share [or shares] subject to the conditions aforesaid. As witness
our hands the

day of

Witness to the signatures of & etc.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers for a period not exceeding fourteen days in any one year subject to the directors having given to all shareholders such notice of intention to close the register as aforesaid as shall in their opinion be efficacious and reasonable. The directors may decline to recognise any instrument of transfer unless it is accompanied by a certificate of due diligence as required by section 50, the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require (*a*) to show the right of the transferor to make the transfer and (*b*) in respect of such information relating to the transferee as the directors may require in respect of identification and due diligence in respect of the transferee.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

FORFEITURE OF SHARES.

23. If a member fails to pay any call or instalment or a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A certificate that person giving the same is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

CONVERSION OF SHARES INTO STOCK.

30. The company may by ordinary resolution convert any paid up shares into stock, and reconvert any stock into paid up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof in the same manner, and subject to the same regulations as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit: but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

ALTERATION OF CAPITAL.

34. The company may from time to time by resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

[S 37/2003]

35. Subject to any direction to the contrary in these regulations or in the terms of issue of existing shares or as may be agreed to by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio, which the new shares bear to shares held by persons entitled to an offer of new shares,) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, in lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by resolution increase, cancel part of or alter its capital in any manner permitted by section 43.

[S 37/2003]

38. The company may by 75 per cent resolution and subject to compliance with section 43 reduce its share capital and any capital redemption reserve fund in any permitted manner.

GENERAL MEETINGS.

39. A general meeting shall be held within 18 months of the date of registration of the company and thereafter once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) in such manner and in such place as may be decided by the directors, and a member shall be deemed to be present at a meeting if he participates by telephone, video-conferencing facility or other electronic means and all members participating in the meeting are able to hear each other.

40. The abovementioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default may be convened by such requisitionists, as provided by section 82.

GENERAL MEETINGS, WRITTEN CONSENTS OF MEMBERS.

42. Subject to section 83 including provisions as to waiver of notice by members the directors shall give to those persons whose names, on the date the notice is given, appear as members in the share register, not less than seven days' notice of meetings (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the manner, the place, the day and the hour of meeting.

43. Subject to these regulations, any action that may be taken by members at a meeting of members may be taken by a resolution or 75 per cent resolution (as the case may be) of members consented to in writing or by telex, telegram, cable or other written electronic communication without the need for any notice.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS.

44. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS.

45. The number of directors shall be determined in writing by a majority of the subscribers to the memorandum. Until otherwise so determined there shall be not less than one and not more than seven directors.

[S 37/2003]

46. The remuneration of the directors shall from time to time be determined by the company in general meeting.

POWERS AND DUTIES OF DIRECTORS.

47. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Order, or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Order, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if the regulation had not been made.

48. The directors shall cause minutes to be made in books provided for the purpose –

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meeting of the company, and of the directors, and of committees of directors.

SEAL.

49. It shall not be required that the company adopt a common seal, and any instrument document act deed matter or thing signed and attested as required by the Order shall be binding on the company, but if a Seal is so adopted then it shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

DISQUALIFICATION OF DIRECTORS.

50. The office of director shall be vacated, if the director –

- (a) becomes bankrupt;
- (b) becomes prohibited from being the director by reason of any order made under the Order;
- (c) is found lunatic or becomes of unsound mind;
- (d) resign his office by notice in writing to the company; or
- (e) is directly or indirectly interested in any contract with the company and wilfully fails to declare his interest in manner required by the Order.

A director may vote in respect of any contract in which he is interested or any matter arising thereout subject to his declaring his interest before voting.

APPOINTMENT.

51. At any time and from time to time, the company may (without prejudice to the powers of the directors under these regulations) by resolution appoint any person a director (but so that the maximum number of directors fixed in accordance with these regulations is not exceeded) and determine the period for which such person is to hold office.

[S 37/2003]

52. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations, and determine the period for which such person is to hold office.

53. The company may from time to time by resolution increase or reduce the number of directors.

ALTERNATE DIRECTORS.

54. (1) Each director shall have power from time to time to nominate any person who has been approved for the purpose by a majority of the other directors to act as his alternate director and at his discretion to remove such alternate director.

(2) An alternate director shall be entitled to receive notices of all meetings of the directors and to attend speak and vote at any such meeting of which his appointor is not present.

55. The company may by 75 per cent resolution remove any director before the expiration of his period of office, and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointment was last elected as director.

PROCEEDINGS OF DIRECTORS.

56. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

57. A resolution in writing signed or approved by letter telegram facsimile or electronic means creating a permanent record (and in any case entered in its minute book of the company by each director or his alternate) shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held and when signed may consist of several documents each signed by one or more of the persons aforesaid.

58. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds one, be two.

59. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of director, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

60. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if so such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointment for holding the same, the directors present may choose one of their number to be chairman of the meeting.

61. (a) The directors may by resolution delegate any of their powers to committees consisting of such person or persons whether or not a member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated, conform to any restrictions on their powers or any regulations that may be imposed on them by the directors.

(b) The directors may by resolution appoint any person, including a director, to be an officer or agent of the company, and subject hereto, each officer or agent so appointed has the authority of the directors, including the power and authority to execute and complete any document as the agent of the company, or to affix the common seal (if any) to any document in either case in the manner set forth in the resolution of directors pursuant to which he is acting.

- (c) No officer or agent shall have power or authority with respect to any matter which under the Order requires a resolution of directors.
- (d) The directors may, in the resolution appointing an agent authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers of the agent conferred by section 76 and this regulation.
- (e) The directors may by resolution remove an officer or agent appointed under this regulation or revoke or vary a power conferred upon him hereby.

62. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

63. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of equality for votes the chairman shall have a second or casting vote. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

ACCOUNTS.

64. The directors shall cause proper books of account to be kept with respect to –
all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

all sales and purchases of goods by the company; and the assets and liabilities of the company.

65. The books of account or up-to-date and complete copies thereof shall be kept at the registered office of the company and shall always be open to the inspection of the directors.

66. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspection any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

67. The directors shall from time to time in accordance with section 93, cause to be prepared and to be laid before the company in general meeting such accounts, records, and reports as are referred to in that section.

68. A copy of the accounts (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report (if any) shall not less than twenty-four hours before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

AUDIT.

69. Pursuant to section 96 of the Order, the company need not appoint an auditor, but if an auditor is appointed he shall be an approved auditor and his duties shall be regulated and conducted in accordance with the Order and any other applicable written law.

NOTICES.

70. The company may give a notice to any member either personally or by sending it by post or successful facsimile or other electronic means capable of confirming receipt of the notice. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of five days after the letter containing the same was posted.

71. If a member has no registered address for the giving of notices to him, a notice addressed to him at his last known address shall be deemed to be duly given to him on the 6th. day following posting.

72. Notice of every general meeting shall be given in manner hereinbefore authorised to every member except those members who (having no registered address) have not supplied to the company an address for the giving of such notices to them. No other persons other than the auditor (if appointed) shall be entitled to receive notices of general meetings.

DIVIDENDS AND RESERVE.

73. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

74. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

75. No dividend shall be paid otherwise than out of profits save as otherwise permitted by sections 57 and 58.

76. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

77. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

78. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

79. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

80. No dividend shall bear interest against the company.

Dated the _____ day of _____ 20

Name and Address of registered agent

Subscriber

.....
Director/Authorised Officer

Witness to the above signatures,

Name:

.....
(signed)

Address

INDEMNITY. [S 37/2003]

81. Subject to the provisions of and so far as may be permitted by the Order, every director and other officer or servant of the company shall be indemnified by the company against, and it shall be the duty of the directors out of the funds of the company to pay, all costs, losses and expenses which any such officer or servant may incur or become liable to incur by reason of any contract entered into or act or deed done by him as such officer or servant or in any way in proper and legal discharge of his duties, including reasonable hotel, travelling and other expenses.

WINDING-UP. [S 37/2003]

82. If the company is wound up and the assets available for distribution amongst the members as such are insufficient to repay the whole of the paid-up capital of the company, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid-up or which ought to have been paid-up at the commencement of the winding-up on shares held by them respectively. If on a winding-up the assets available for distribution amongst the members are more than sufficient to repay the whole of the capital paid-up at the commencement of the winding-up on the respective shares held by them. This Article is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

83. If the company is wound-up, whether voluntarily or otherwise, the liquidator may, with the sanction of a special resolution, divide amongst the members in specie or in kind the whole or any part of the assets of the company and may, with the like sanction, vest the whole or any part of such in trustees upon trust.

[S 37/2003]

**ARTICLES OF ASSOCIATION
OF
COMPANY LIMITED BY GUARANTEE**

PRELIMINARY.

1. In these regulations –

“the Order” means the International Business Companies Order, 2000.

“section” means a section of the Order.

When any provision of the Order is referred to the reference is to such provision as modified by any Order for the time being in force.

Unless the context otherwise requires, expressions defined in the Order or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have meanings so defined.

MEMBERS.

2. The number of members with which the company proposes to be registered is [*at least one*], but the directors may from time to time register an increase of members.

3. The subscriber(s) to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

GENERAL MEETINGS.

4. The first general meeting shall be held at such time, being not more than fifteen months after the incorporation of the company, at such place and in such manner, as the directors may determine.

5. A general meeting shall thereafter be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) in such manner and at such place as may be prescribed by the directors or by the company in general meeting, or by one member(s) in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The abovementioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings. The directors may, whenever they think fit, convene extraordinary general meetings shall may also be convened on such requisition, or, in default, may be convened by such requisitionists as are provided by section 82.

NOTICE OF GENERAL MEETINGS.

7. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the manner, place, the day, and the hour of to such persons as are, entitled to receive such notices from the company; but, with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETING.

9. All business shall be deemed special that is transacted at an extra-ordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors (if any), the election of directors and other officers in the place of those retiring, and the fixing of the remuneration of any auditors.

10. No business shall be transacted at any general meeting unless a *quorum* of members is present at the time when the meeting proceeds to business; save as herein otherwise provided fifty per cent or more of members entitled to vote present or in attendance personally or by proxy shall be a *quorum*.

[S 37/2003]

11. If within half an hour from the time appointed for the meeting a *quorum* is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned *sine die*.

12. The chairman or president, if any, of the board of directors shall preside as chairman at every general meeting of the company.

13. If there is no such chairman or president, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

14. The chairman may, with the consent of any meeting at which a *quorum* is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least one member(s) present in person or by proxy entitled to vote and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

[S 37/2003]

16. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF MEMBERS.

19. Subject to the provisions of the Order a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under the seal or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument of appointment of a proxy and the power of attorney or other authority, if any, under which it is signed or as certified by the company at or before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

[S 37/2003]

26. The instrument appointing a proxy may be in the following form, or any other form which the directors shall approve –

(name of company)

“I
of
being a member of
appoint
to
of
as my proxy
hereby
as my proxy
vote for me and on my behalf at the [ordinary or extraordinary, as the case may be]
general meeting of the company to be held on the day of
and at any adjournment thereof.”

Signed this day of 20

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS.

[S 37/2003]

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS.

29. The number of directors shall be determined in writing by the subscribers to the memorandum or by the company. Until otherwise so determined there shall be not less than one and not more than seven directors.

30. The company in general meeting shall from time to time determine the remuneration of the directors.

POWERS AND DUTIES OF DIRECTORS.

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Order, or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Order, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if the regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose –

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meeting of the company, and of the directors, and of committees of directors.

THE SEAL.

33. The company need not adopt a seal, but if it does then the seal shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or in the presence of such other person or persons as the directors may appoint for purpose; and that director and the secretary or other person or persons as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

DISQUALIFICATIONS OF DIRECTORS.

34. The office of director shall be vacated, if the director –

- (a) becomes bankrupt;
- (b) becomes prohibited from being the director by reason of any order made under the Order;
- (c) is found lunatic or becomes of unsound mind; or
- (d) resigns his office by notice in writing to the company.

APPOINTMENT.

35. At any time and from time to time, the company may (without prejudice to the powers of the directors under these regulations appoint any person a director (but so that the maximum number of directors fixed in accordance with these regulations is not exceeded) and determine the period for which such person is to hold office.

36. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations, and determine the period for which such person is to hold office.

37. The company may from time to time increase or reduce the number of directors.

ALTERNATE DIRECTORS.

38. (1) Each director shall have power from time to time in writing to nominate any person to act as his alternate director and at his discretion to remove such alternate director.

(2) An alternate director shall be subject in all respects to the terms and conditions existing with reference to the other directors, and shall be entitled to receive notices of all meetings of the directors and to attend speak and vote at any such meeting of which his appointor is not present.

39. The company may by special resolution remove any director before the expiration of his period of office, and may by ordinary resolution appoint another person in his stead.

PROCEEDINGS OF DIRECTORS.

40. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

41. A resolution in writing signed or approved by letter telegram facsimile or electronic means evidencing valid signatures and creating a permanent record (and in any case entered in its Minute Book of the Company) by each director or his alternate shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held and when signed may consist of several documents each signed by one or more of the persons aforesaid.

42. The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two save in the case of a sole director.

43. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary *quorum* of director, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

44. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if so such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointment for holding the same, the directors present may choose one of their number to be chairman of the meeting.

45. The directors may delegate any of their powers to committees consisting of such person or persons as they think fit; any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

46. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

47. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, [and in case of an equality for votes the chairman shall have a second or casting vote].

48. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

ACCOUNTS.

49. The accounts shall be kept at the registered office of the company and shall always be open to the inspection of the directors.

50. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspection any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

51. The directors shall from time to time in accordance with sections 92 and 93 cause to be prepared and to be laid before the company in general meeting such records and accounts as are referred to in those sections.

52. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting before the meeting be sent to all persons entitled to receive notices of general meetings of the company.

AUDIT.

53. Auditors shall be appointed and their duties regulated in accordance with Part IX of the Order.

NOTICES.

54. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or by successful facsimile transmission or verifiable electronic mail, and in course of post (not exceeding seven days) or at the time of confirmation of successful transmission.

55. If a member has no registered address within Brunei and has not supplied to the company an address within Brunei for the giving of notices to him, a notice addressed to him and sent to his last known address shall be deemed to be duly given to him in accordance with regulation 54.

56. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member and the auditor (if any).

(name of licensed registered agent)

.....
.....

of *(address)*

a company duly licensed pursuant to the provisions of the Registered Agents and Trustees Licensing Order, 2000,

HEREBY executes these Articles this day of 20

SIGNED for and on behalf of

(Name of registered agent)

By *(name of signing officer)*

In the presence of: Director/Authorised Officer

.....

(name of witness)

Made this 21st day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**