MONTSERRAT

CHAPTER 11.12

COMPANIES ACT

Revised Edition
showing the law as at 1 January 2025

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

This edition contains a consolidation of the following laws—

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CHAPTER 11.12

COMPANIES ACT

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CHAPTER 11.12

COMPANIES ACT

(Act 15 of 2023)

AN ACT TO REPEAL AND REPLACE THE COMPANIES ACT.

Commencement

[1 April 2024]

PART 1

PRELIMINARY

Short title

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

Interpretation

2. (1) In this Act—

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

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

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

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

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

"board", in relation to a company, means—

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

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

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

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

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

"company" means—

(a) a company incorporated under section 6;

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

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

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

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

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

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

"consolidation" has the meaning specified in section 190;

"continued" means continued under section 204;

"country" includes a territory;

"Court" means the High Court;

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

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

"distribution" has the meaning specified in section 51;

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

(a) any writing or printing on any material;

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

(c) books and drawings; and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced, and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;

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

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

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

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

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

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

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

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

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

(a) a parent of the first company;

(b) a subsidiary of the first company;

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

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

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

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

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

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

"large company" has the meaning specified in subsection (9);

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

"limited company" means—

(a) a company limited by shares;

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

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

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

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

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

(b) approved for listing on a recognised exchange;

"merger" has the meaning assigned in section 190;

"Minister" means the Minister responsible for finance;

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

"Official Receiver" means the official receiver appointed under section 62 of the Bankruptcy Act (Cap. 3.03);

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

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

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

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

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

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

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

"prescribed" means prescribed by the Regulations;

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

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

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

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

"recognised exchange" means a stock exchange or an investment exchange that is specified by the Commission as a recognised exchange in a notice published in the *Gazette*;

"register", in relation to an act done by the Registrar, means to register in the Register of Companies, the Register of Foreign Companies, the

Register of Registered Charges, the PSC Register or any other register maintained by the Registrar under this Act or the Regulations;

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

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

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

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

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

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

"registered agent" means—

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

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

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

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

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

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

"Regulations" means regulations made under this Act;

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

"reporting company" means a company that is—

(a) a large company; or

(b) a public company;

"resolution"—

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

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

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

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

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

"shareholder", in relation to a company, means—

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

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

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

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

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

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

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

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

"wholly-owned subsidiary" has the meaning specified in subsection (7).

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

(a) a shareholder;

(b) a guarantee member; or

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

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

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

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

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

(ii) each first director of the company.

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

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

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

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

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

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

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

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

(7) A company (the **"first company"**) is a wholly owned subsidiary of another company (the **"second company"**) if the second company is the only member of the first company.

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

(9) A company is a large company if—

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

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

PART 2

FORMATION OF COMPANIES, CAPACITY AND POWERS

Division 1

Incorporation of Companies

Types of company

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

(a) a company limited by shares;

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

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

(d) a non-profit company.

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

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

Public companies

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

Application to incorporate a company

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

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

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

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

(d) any other document as may be prescribed.

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

(a) is less than eighteen years of age;

(b) is an undischarged bankrupt;

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

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

(3) An application to incorporate shall specify—

(a) the type of company to be incorporated;

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

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

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

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

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

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

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

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

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

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

Incorporation of a company

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

(a) register the documents filed;

(b) allot a unique number to the company;

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

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

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

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

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

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

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

Articles of incorporation and by-laws

Articles of incorporation

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

(a) the name of the company;

(b) whether the company is—

(i) a company limited by shares;

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

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

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

(c) whether the company is a public company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of articles

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

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

(b) each member of the company.

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

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

Amendment of articles

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

(2) The articles of a company may provide—

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

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

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

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

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

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

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

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

Filing of notice of amendment of articles

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

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

(b) restated articles incorporating the amendment made.

(2) An amendment to the articles takes effect—

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

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

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

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

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

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

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

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

Restated articles

11. (1) A company may file restated articles.

(2) Restated articles shall incorporate only an amendment—

(a) registered under section 10; or

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

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

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

(a) each amendment;

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

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

Provision of copies of articles to members

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

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

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

By-laws

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

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

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

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

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

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

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

Division 2

Company Names

Required part of registered name

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

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

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

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

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

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

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

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

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

Restrictions on company names

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

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

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

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

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

(c) that is identical to a name that has been reserved under section 20 or that is so similar to a name that has been reserved under section 20 that the use of both names by different companies would, in the opinion of the Registrar, be likely to confuse or mislead;

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

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

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

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

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

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

Company may change registered name

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

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

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

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

Registrar may direct change of registered name

17. (1) If the Registrar considers, on reasonable grounds, that the registered name of a company does not comply with sections 14 or 15, the Registrar may, by written notice, direct the company to apply to change its name on or before a date specified in the notice.

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

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

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

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

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

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

Effect of change of registered name

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

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

(b) does not affect—

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

(ii) legal proceedings by or against the company.

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

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

Regulations may provide for company names to be re-used

19. The Regulations may provide for the re-use of a registered name previously used by a company that—

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

(i) changed its name;

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

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

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

Reservation of name

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

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

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

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

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

Use of registered company name

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

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

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

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

Limit on Registrar's obligations

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

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

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

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

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

Division 3

Capacity and Powers

Separate legal personality

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

Capacity and powers of company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Validity of acts of company

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

Personal liability

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

Dealings with other persons

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

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

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

(i) is not a director of the company;

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

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

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

(i) has not been duly appointed; or

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

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

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

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

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

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

Constructive notice

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

(a) to the public from the Registrar; or

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

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

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

Contracts, Powers of Attorney and Seal

Pre-incorporation contracts

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

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

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

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

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

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

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

(4) Subject to subsection (6), a party to a written contract entered into in the name of or on behalf of a company before it was incorporated may apply to the Court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf and the Court may, upon the application, make any order it thinks fit.

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

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

Contracts generally

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

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

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

(ii) varied or discharged in accordance with sub-paragraph (i);

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

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

(ii) varied or discharged in accordance with sub-paragraph (i); and

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

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

(ii) varied or discharged in accordance with sub-paragraph (i).

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

(3) Despite subsection (1)*(a)*—

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

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

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

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

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

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

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

Notes and bills of exchange

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

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

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

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

Power of attorney

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

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

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

(a) executed as a deed; or

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

Authentication or attestation

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

Common seal

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

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

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

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

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

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

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

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

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

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

PART 3

SHARES, DISTRIBUTIONS AND SHARE REDEMPTIONS

Division 1

Shares

Rights and Obligations

Rights attaching to shares and classes and series of shares

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

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

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

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

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

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

(a) more than one class of shares;

(b) a class of shares in series; and

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

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

Types of shares

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

(a) be redeemable;

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

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

(d) confer no voting rights;

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

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

(2) A company may issue—

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

(b) fractional shares.

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

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

No nominal value

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

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

Bearer shares and nominee shareholders

38. (1) A company shall not—

(a) issue a bearer share;

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

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

(2) A shareholder of a company who is a nominee shareholder shall give written notification of that fact to the company and provide the company with the prescribed particulars of the person for whom the shareholder is a nominee—

(a) in the case of a shareholder who is a nominee shareholder on the date of incorporation of the company, within fourteen days after the date of incorporation; or

(b) in the case of a shareholder who becomes a nominee shareholder after the date of incorporation of the company, within fourteen days after the date on which the shareholder becomes a nominee shareholder.

(3) A shareholder of a company referred to in subsection (1) shall—

(a) within fourteen days after the date that the shareholder ceases to be a nominee shareholder, give written notification of that fact to the company; and

(b) within fourteen days after any change to the particulars provided to the company under subsection (1), give written notification of the changed particulars to the company.

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

(5) A shareholder who fails to comply with subsection (2) or (3), commits an offence and is liable on summary conviction to a fine of $25,000.

Change in number of shares company authorised to issue

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

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

Division and combination of shares

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

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

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

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

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

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

Issue of Shares

Issue of shares and share certificates

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

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

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

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

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

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

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

Consent to issue of shares

42. The issue by a company of a share that—

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

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

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

Consideration for shares

43. Subject to section 44, the consideration for which a share is issued may take any form, including money, a promissory note, or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered or a contract for future services.

Shares issued for consideration other than money

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

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

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

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

Pre-emptive rights

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

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

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

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

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

(6) Despite this section, a shareholder does not have a pre-emptive right in respect of shares to be issued by the company pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

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

Forfeiture of shares

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

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

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

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

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

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

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

Transfer of Shares

Shares may be transferred

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

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

Transfer of shares by operation of law

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

Transfer of shares

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

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

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

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

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

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

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

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

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

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

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

despite the absence of the instrument of transfer.

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

Division 2

Distributions

Application of this Division

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

Meaning of "solvency test" and "distribution"

51. For the purposes of this Division—

(a) a company satisfies the solvency test if—

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

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

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

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

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

Distributions

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

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

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

Recovery of distribution made when company did not satisfy solvency test

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

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

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

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

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

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

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

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

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

(a) permit the member to retain; or

(b) relieve the director from liability in respect of, an amount equal to the value of any distribution that could properly have been made.

Division 3

Share Redemptions

Purchase, redemption or other acquisition of own shares

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

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

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

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

(b) the company was continued under this Act.

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

Exemptions

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

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

Process for purchase, redemption or other acquisition of own shares

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

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

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

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

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

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

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

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

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

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

Offer to one or more shareholders

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

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

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

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

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

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

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

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

Shares redeemed otherwise than at option of company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Treasury shares

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

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

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

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

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

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

Division 4

Mortgages and Charges of Shares

Mortgages and charges over shares

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

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

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

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

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

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

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

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

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

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

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

(i) vote the shares;

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

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

until the mortgage or charge is discharged.

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

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

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

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

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

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

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

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

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

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

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

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

PART 4

MEMBERS

Company to have one or more members

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

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

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

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

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

Liability of members

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

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

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

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

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

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

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

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

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

Register of members

Company to maintain register of members

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

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

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

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

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

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

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

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

(d) in the case of any company—

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

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

(e) any other information as may be prescribed

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

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

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

Register of members as evidence

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

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

(3) A company may treat—

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

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

(ii) receive a notice;

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

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

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

Rectification of register of members

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

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

(i) omitted from the register; or

(ii) inaccurately entered in the register; or

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

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

(a) a member of the company;

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

(c) the company.

(3) The Court may—

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

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

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

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

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

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

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

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

Members' resolutions

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

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

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

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

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

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

(3) A special resolution is passed if—

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

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

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

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

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

Meetings of members

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

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

(a) the directors of the company; or

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

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

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

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

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

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

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

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

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

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

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

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

Notice of meetings of members

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

(a) each person—

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

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

(b) each director of the company.

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

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

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

Quorum for meetings of members

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

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

Court may call meeting of members

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

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

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

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

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

Regulations may provide for meetings of members

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

Written resolutions

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

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

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

Service of notice on members

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

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

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

(i) personal service;

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

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

Shareholder agreements

Pooling agreement

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

Unanimous shareholder agreement

76. (1) An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid.

(2) A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties, and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company; and the directors are thereby relieved of their duties and liabilities to the same extent.

(3) If a person who is the beneficial owner of all the issued shares of a company makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the company, the declaration constitutes a unanimous shareholder agreement.

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

Shareholder approvals

Extraordinary transaction

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

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

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

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

but failure to make the statement referred to in paragraph *(b)* does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the members may authorise the sale, lease or exchange of the property, and may fix or authorise the directors to fix any of the terms and conditions of the sale, lease or exchange.

(4) Each share of the company carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.

(5) The members of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

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

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

PART 5

COMPANY ADMINISTRATION

Division 1

Registered office and registered agent

Registered office

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

(2) The registered office of a company is—

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

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

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

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

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

Eligibility for appointment as registered agent

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

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

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

(i) is a licensed company manager; or

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

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

(a) a reporting company; and

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

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

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

Registered agent

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

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

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

(b) if a change of registered agent is filed under section 82, the person specified as the company's registered agent in the last notice to be registered by the Registrar.

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

(a) does not have a registered agent; or

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

Appointment of registered agent

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

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

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

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

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

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

(b) filed by the registered agent.

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

Change of registered office or registered agent

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

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

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

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

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

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

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

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

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

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

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

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

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

Resignation of registered agent

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

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

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

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

(c) file copies of—

(i) the notice of intention to resign; and

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

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

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

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

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

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

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

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

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

(7) A rescission notice shall not be filed—

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

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

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

Registered agent ceasing to be eligible to act

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

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

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

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

(a) a notice—

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

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

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

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

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

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

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

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

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

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

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

whichever is earlier.

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

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

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

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

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

Division 2

Persons with significant control over a relevant company

Scope of this Division

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

Persons with significant control over a relevant company

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

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

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

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

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

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

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

(i) the members of the partnership; or

(ii) the trustees of the trust,

in the capacity of member of the partnership or trustee.

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

Registrable persons

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

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

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

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

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

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

88. (1) A relevant company shall—

(a) take reasonable steps—

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

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

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

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

(2) For the purposes of ascertaining and identifying persons who are registrable persons, a relevant company is entitled to rely, without further

enquiry, on the response of a person to a written notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

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

Notice to be given by relevant company

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

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

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

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

(c) to obtain any additional PSC verification evidence.

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

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

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

(ii) obtained the appropriate PSC verification evidence; and

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

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

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

(i) a registrable person; or

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

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

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

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

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

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

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

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

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

Records to be made and retained by a relevant company

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

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

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

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

Relevant company to keep PSC information up to date

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

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

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

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

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

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

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

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

Offence of failure to comply with notice

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

(a) fails to comply with the notice; or

(b) in purported compliance with the notice—

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

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

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

Duty of other persons to keep PSC information up to date

93. (1) This section applies to a person if—

(a) the person has—

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

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

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

(c) the person knows of the change;

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

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

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

(a) notify the relevant company of the change;

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

(c) give the company—

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

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

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

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

Duty to supply information

94. (1) This section applies to a person if—

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

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

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

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

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

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

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

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

(c) give the company—

(i) the PSC information; and

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

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

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

Relevant company to file PSC information and PSC verification evidence

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

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

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

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

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

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

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

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

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

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

Rectification of PSC Register by the Court

96. (1) If—

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

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

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

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

(a) refuse the application; or

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

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

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

Protection of confidential information and gateways for disclosure

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

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

(b) PSC verification evidence filed under this Division.

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

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

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

(b) in accordance with this Act; or

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

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

Offence relating to disclosure under section 97(3)

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

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

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

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

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

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

(a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(5) In proceedings against a person for an offence under subsection (2), it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way specified in subsection (2).

(6) A person who contravenes subsection (2) commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of two years or to a fine of $50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term of five years or to a fine of $250,000 or to both.

Regulations

99. (1) The Regulations shall, for the purposes of this Division, prescribe—

(a) identity and control information (PSC information) with respect to different types and descriptions of registrable person;

(b) types or descriptions of PSC information that are required to be verified; and

(c) the evidence to be used to verify the PSC information specified under paragraph *(b)*.

(2) The Regulations may—

(a) exempt—

(i) specified types or descriptions of company from the application of this Division; and

(ii) specified types or descriptions of persons from the requirement to comply with a notice given to them under section 89 or section 91;

(b) prescribe rules for determining whether, as provided in this section—

(i) a person has significant control over a company; and

(ii) the circumstances in which a person has control indirectly in a company;

(c) specify persons who, although falling within section 87, are considered not to be registrable persons; and

(d) specify types or descriptions of PSC information entered on the Register of Companies that are excluded from inspection under section 375.

Division 3

Company Records

Keeping of documents

100. (1) A company whose registered agent is a director, as permitted by section 79(1)*(b)*, shall keep the following documents at its registered office—

(a) the articles of the company;

(b) the register of members;

(c) the register of directors; and

(d) a copy of each notice and other documents filed by the company in the previous ten years.

(2) Subject to subsection (3), a company that does not fall within subsection (1) shall keep the documents specified in subsection (1)*(a)* to *(d)* at the office of its registered agent.

(3) A company that is required to appoint a licensed company manager as its registered agent may keep a copy of its register of members or register of directors at the office of its registered agent, instead of the original register.

(4) If a company keeps a copy of its register of members or its register of directors at the office of its registered agent, as permitted by subsection (3), the company shall—

(a) within fifteen days of a change in the register, notify the registered agent, in writing, of the change; and

(b) provide the registered agent with a written record of the physical address of the place at which the original register of members or the original register of directors is kept.

(5) If the place at which the original register of members or the original register of directors is changed, a company referred to in subsection (4) shall provide the registered agent with the physical address of the new location of the records within fourteen days of the change of location.

(6) A company that contravenes subsection (1), (2), (4) or (5), commits an offence and is liable on summary conviction to a fine of $25,000.

Other records to be kept by company

101. (1) A company required to appoint a licensed company manager as its registered agent, shall keep the following records at the office of its registered agent or at a place, within or outside Montserrat, the directors may determine—

(a) minutes of meetings and resolutions of members and of classes of members maintained in accordance with section 104; and

(b) minutes of meetings and resolutions of directors and committees of directors maintained in accordance with section 104.

(2) A company that does not fall within subsection (1) shall keep the records specified in subsection (1)*(a)* and *(b)* at its registered office or at a place in Montserrat, the directors determine.

(3) If a record under subsection (1) is kept at a place other than the office of the company's registered agent, the company shall provide the registered agent with a written record of the physical address of the place at which the record is kept.

(4) If the place at which a record under subsection (1) is kept changes, the company shall provide its registered agent with the physical address of the new location of the record within fourteen days of the change.

(5) A company that fails to comply with this section, commits an offence and is liable on summary conviction to a fine of $25,000.

Inspection of records

102. (1) A director of a company is entitled, on giving reasonable notice to the company—

(a) to inspect a document or record of the company—

(i) in written form;

(ii) without charge; and

(iii) at a reasonable time specified by the director; and

(b) to make a copy of, or take an extract from, the documents and records.

(2) Subject to subsection (3), a member of a company is entitled, on giving written notice to the company—

(a) to inspect—

(i) the articles;

(ii) the register of members;

(iii) the register of directors; and

(iv) minutes of meetings and resolutions of members and of the classes of members of which he is a member; and

(b) to make a copy of, or take an extract from, the documents and records.

(3) Subject to the articles, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect a document, or part of a document, specified in subsection (2)*(a)*(ii), (iii) or (iv), refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

(4) The directors shall, as soon as reasonably practicable, notify a member of the exercise of their powers under subsection (3).

(5) If a company—

(a) fails to permit a member to inspect a document; or

(b) permits a member to inspect a document subject to limitations,

the member may apply to the Court for an order that he be permitted to inspect the document or to inspect the document without limitation.

Service of process, etc. on company

103. (1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to—

(a) in the case of a company whose registered agent is a licensed company manager, the company's registered agent; or

(b) in the case of a company that does not fall within paragraph *(a)*, the company's registered office.

(2) The Regulations may provide for the methods by which service of a document on a company may be proved.

Books and records

104. (1) A company shall keep—

(a) minutes of each meeting of—

(i) directors;

(ii) members;

(iii) committees of directors;

(iv) committees of members; and

(b) a copy of each resolution consented to by—

(i) directors;

(ii) members;

(iii) committees of directors; and

(iv) committees of members.

(2) The records required to be kept by a company under this Act shall be kept—

(a) in written form; or

(b) as electronic records.

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

Division 4

Accounting Records and Financial Reporting

Financial Records

Financial records

105. (1) A company shall keep financial records, including underlying documentation, that are sufficient—

(a) to show and explain its transactions;

(b) to enable its financial position to be determined with reasonable accuracy, at any time;

(c) to enable it to prepare such financial statements and make such returns as it may be required to prepare and make under this Act and the Regulations; and

(d) if applicable, to enable its financial statements to be audited in accordance with this Act and the Regulations.

(2) The financial records of a company that is required to appoint a licensed company manager as its registered agent, may be kept at the office of its registered agent or at a place within or outside Montserrat, as the directors may determine.

(3) The financial records of a company to which subsection (2) does not apply, shall be kept at the company's registered office or at a place within Montserrat, as the directors may determine.

(4) If a company to which subsection (2) applies keeps its financial records at a place other than the office of its registered agent, the company must ensure that it keeps at the office of its registered agent—

(a) financial records that disclose with reasonable accuracy the financial position of the company at intervals not exceeding three months; and

(b) a written record of the place where the financial records are kept.

(5) The accounting records under this section shall be kept for at least seven years after the end of the financial year to which they relate.

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

(7) For the purposes of this section, **"underlying documentation"** includes an invoice, a receipt, a contract, any other document that evidences a transaction and any document that assists in determining the financial position of the company.

Financial Reporting

Requirement to file financial statements and returns

106. (1) A reporting company is required to prepare and file financial statements and returns under this Division.

(2) A non-profit company shall prepare and file such financial statements and returns as may be prescribed.

(3) A company shall, not later than the first day of April in each year after its incorporation or continuance under this Act, send to the Registrar an annual return in the prescribed form containing the prescribed information made up to the preceding 31 December and accompanied with the prescribed fees.

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

Annual financial returns

107. (1) Subject to section 108, the directors of a reporting company shall place before the members at each annual meeting of the members of the company—

(a) comparative financial statements complying with the Regulations, relating separately to—

(i) the period that began on the date the company was incorporated or continued and ended not more than twelve months after that date, or, if the company has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than twelve months after the beginning of that period; and

(ii) the financial year immediately preceding the meeting;

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

(c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

(2) The financial statements required by subsection (1)*(a)*(ii) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the members at an annual meeting.

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

(4) The financial statements of a reporting company specified in section 106(1) must be prepared in accordance with such accounting standards as may be prescribed.

Exemption for information

108. (1) A reporting company may omit from its financial statements any information prescribed as information that may be so omitted.

(2) The Registrar may, on the application of a reporting company, authorise the company to omit specified information from its financial statements if the Registrar reasonably believes that disclosure of the information would be detrimental to the company.

Consolidated financial returns

109. (1) A reporting company shall keep at the office of its registered agent, a copy of the financial statements of each subsidiary the accounts of which are consolidated in the financial statements of the company.

(2) Members of a reporting company and their agents and legal representatives may, upon request, examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts from those statements, free of charge.

(3) A reporting company may, within fifteen days of a request to examine statements under subsection (2), apply to the Court for an order barring the right of any person to examine those statements; and the Court may, if it is satisfied that the examination would be detrimental to the

company or a subsidiary, bar that right and make any further order the Court thinks fit.

(4) A reporting company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3) and the Registrar and that person may appear and be heard in person or by an attorney-at-law.

Approval of directors

110. (1) The directors of a reporting company shall approve the financial statements referred to in section 107, and the approval shall be evidenced by the signature of one or more directors.

(2) A reporting company shall not issue, publish or circulate copies of the financial statements referred to in section 107 unless the financial statements are—

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by a report of the auditor of the company.

Copies of documents to be sent to members

111. (1) Not less than twenty-one days before each annual meeting of the members of a reporting company or before the passing of a written resolution that complies with section 73(3), instead of its annual meeting, the company shall send a copy of the documents referred to in section 107 to each member, except a member who has informed the company in writing that he does not want a copy of those documents.

(2) Despite subsection (1), a public company that is a listed company is not required, in such cases as may be prescribed, and provided any prescribed conditions are complied with, to send copies of the documents referred to in section 107 to members of the company, but may instead send them a summary financial statement.

(3) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall be in the prescribed form and contain the prescribed information.

(4) Every summary financial statement shall—

(a) state that it is only a summary of information in the company's annual accounts and the directors' report;

(b) contain a statement of the company's auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and the Regulations;

(c) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified, set out the report in full together with any further material needed to understand the qualification; and

(d) state whether the auditors' report on the annual accounts contained a statement as to—

(i) the inadequacy of the accounting records or returns;

(ii) the accounts not agreeing with the records or returns; or

(iii) the failure to obtain necessary information or explanations.

Registrar's copies

112. (1) A reporting company shall send a copy of the documents referred to in section 107 to the Registrar—

(a) not less than twenty-one days before each annual meeting of the members; or

(b) immediately after the signing of a resolution under section 73 *in lieu* of the annual meeting,

and in any event not later than fifteen months after the last date when the last preceding annual meeting should have been held or a resolution *in lieu* of the meeting should have been signed.

(2) On the application of a reporting company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.

(3) If a reporting company—

(a) sends interim financial statements or related documents to its members; or

(b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognised exchange,

the company shall immediately send copies to the Registrar.

(4) A subsidiary company is not required to comply with this section if—

(a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary; and

(b) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with this section.

Certificate of solvency

113. (1) Subject to this section, a company that is not a reporting company shall, within the period specified in section 111(1), file a certificate of solvency signed by at least one director on behalf of the directors certifying

that the directors are satisfied, on reasonable grounds, that the company satisfies the solvency test at the date of the certificate.

(2) If the company has appointed an auditor, the auditor shall state in the certificate whether, in his opinion, the company satisfies the solvency test at the date of the certificate and sign the certificate.

(3) If the auditor of a company refuses to sign the solvency certificate mentioned in subsection (2), a note of his refusal shall be endorsed on the certificate.

(4) A director or auditor of a company who signs or files or concurs in the filing of a certificate required by this section which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate, commits an offence.

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

(6) A company that is not required to comply with section 111 by virtue of section 112(4), is not required to comply with this section.

(7) A director or auditor who commits an offence under subsection (4) is liable on summary conviction to—

(a) imprisonment for a term of twelve months; or

(b) a fine of $50,000.

Audit Committee

114. (1) Subject to subsection (2) a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates.

(2) A public company may apply to the Registrar for an order authorising the company to dispense with an audit committee, and the Registrar may, if satisfied that the members will not be prejudiced, permit the company to dispense with an audit committee on such reasonable conditions as the Registrar considers fit.

(3) An audit committee shall review the financial statements of the company before such financial statements are approved under section 110.

(4) A member of the audit committee who calls a meeting of the audit committee shall send the auditor notice of the meeting at the same time that the notice is sent to other members of the audit committee.

(5) The auditor of a company is entitled, at the expense of the company, to attend and be heard at each meeting of the audit committee and, if so, requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

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

Company Auditor

Eligibility for appointment

115. (1) A person is eligible for appointment as auditor of a company only if the person—

(a) is a person in good standing as a member of the Institute of Chartered Accountants of the Caribbean or of an association of chartered or public accountants or other similar body approved by the Commission as a reputable auditing association; or

(b) is authorised to be appointed as an auditor of companies by an instrument in writing signed by the Minister under section 158(2) of the former Companies Act.

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

Effect of appointment of partnership

116. (1) The following provisions apply to the appointment as auditor of a company of a partnership constituted under the law of Montserrat or under the law of any other country or territory in which a partnership is not a legal person.

(2) The appointment is, unless a contrary intention appears, an appointment of the partnership and not of the partners.

(3) If the partnership ceases, the appointment shall be treated as extending to—

(a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and

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

(4) For the purpose of subsection (3)—

(a) a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and

(b) a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) If the partnership ceases and no person succeeds to the appointment under subsection (3), the appointment may, with the consent of the company, be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company.

Ineligibility on ground of lack of independence

117. A person is ineligible for appointment as auditor of a company if—

(a) the person is an officer or employee of the company;

(b) the person is a partner or employee of such a person, or a partnership of which such a person is a partner, or if he is ineligible by virtue of paragraph *(a)* or *(b)* for appointment as auditor of any affiliate of the company; or

(c) there exists between the person and any associate of his and the company or any affiliate, a connection of any such description as may be prescribed.

Effect of ineligibility

118. (1) No person shall act as auditor of a company if ineligible for appointment to the office.

(2) If during his term of office, an auditor of a company becomes ineligible for appointment to the office, he shall vacate his office and shall give notice in writing to the company concerned that he has vacated his office by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of subsection (1) or fails to give notice of vacating his office as required by subsection (2), commits an offence.

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

(5) A person who commits an offence under subsection (3), is liable on summary conviction to a fine of $50,000.

Appointment of auditor

119. (1) Subject to section 120, the members of a company shall, by ordinary resolution, at the first annual meeting of members and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 139(1)*(d)* is eligible for appointment under subsection (1).

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

(4) The members of a company may, by ordinary resolution at the meeting at which the auditor is appointed, fix the auditor's remuneration.

(5) If the members of a company do not fix the auditor's remuneration in accordance with subsection (4), the directors may, by resolution, fix the auditor's remuneration.

Dispensing with auditor

120. (1) The members of a company other than a reporting company may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is not valid until the next succeeding annual meeting of members.

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

Cessation of office

121. (1) An auditor of a company ceases to hold office when he—

(a) dies or resigns; or

(b) is removed pursuant to section 122.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the time specified in the resignation, whichever is the later date.

Removal of auditor

122. (1) The members of a company may, by ordinary resolution at a special meeting, remove an auditor other than an auditor appointed by a court order under section 124.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 123.

Filling auditor vacancy

123. (1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within twenty-one days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy; and if they fail to call a meeting, or if there are no directors, the meeting may be called by a member.

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

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

Court appointed auditor

124. **(1)** If a company does not have an auditor, the Court may, upon the application of a member or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the members.

(2) Subsection (1) does not apply if the members have resolved under section 120 not to appoint an auditor.

Auditor rights to notice

125. The auditor of a company is entitled to receive notice of every meeting of the members of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

Required attendance

126. **(1)** If a member of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company, not less than ten days before a meeting of the members of the company, to attend the meeting, the auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

(2) A member or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) Subsection (1) applies, with such modifications as the circumstances require, to a former auditor of the company.

Right to comment

127. **(1)** An auditor who—

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him from office;

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

(d) receives a notice or otherwise learns of a meeting of members at which a resolution referred to in section 120 is to be proposed,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company shall immediately send a copy of the statement to every member

entitled to receive notice of any meeting referred to in section 125 and to the Registrar.

Examination by auditor

128. (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the members, except such financial statements or parts of the financial statements that relate to the immediately preceding financial year referred to in section 107(1)*(a)*(ii).

(2) Despite section 129, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

Right to inspect

129. (1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor—

(a) such information and explanations; and

(b) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 128 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company shall—

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 128; and

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

Detected error

130. **(1)** A director or an officer of a company shall immediately notify the audit committee and the auditor of any error or mis-statement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly.

(3) When, under subsection (2), the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall—

(a) prepare and issue revised financial statements; or

(b) otherwise inform the members of the error or mis-statement,

and, if the company is one that is required to comply with section 112, inform the Registrar of the error or mis-statement in the same manner as the directors inform the members of the error or mis-statement.

Immunity of auditor

131. An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act.

PART 6

DIRECTORS AND SECRETARY

Management by Directors

Management by directors

132. **(1)** The business and affairs of a company shall be managed by, or under the direction or supervision of, the directors of the company.

(2) The directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company.

(3) Subsections (1) and (2) are subject to any modifications or limitations in this Act or the articles.

(4) Subject to subsections (5)—

(a) a public company shall have at least three directors and any other company shall have at least one director; and

(b) subject to paragraph *(a)*, the number of directors of a company may be fixed by, or in the manner provided in, the articles.

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

(6) If at any time a company does not have a director, a person who manages, or directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.

First directors

133. Each person named in the application to incorporate as a proposed director, holds office as director from the incorporation of the company, until the person ceases to be a director in accordance with this Act.

Committees of directors

134. (1) Subject to the articles and to subsection (2), the directors may—

(a) designate one or more committees of directors, each consisting of one or more directors; and

(b) delegate any one or more of their powers, including the power to affix the common seal of the company, to the committee.

(2) Despite the articles, the directors shall not delegate the following powers to a committee of directors—

(a) to amend the articles;

(b) to designate a committee of directors;

(c) to delegate powers to a committee of directors;

(d) to appoint or remove directors;

(e) to appoint or remove an agent;

(f) to approve a plan or merger, consolidation or arrangement;

(g) to make a determination under section 52(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(h) to exercise any other power that may be prescribed.

(3) Subsection (2)*(b)* and *(c)* do not prevent a committee of directors, if authorised by the directors, from—

(a) appointing a subcommittee; and

(b) delegating powers exercisable by the committee to the subcommittee.

(4) If the directors of a company delegate their powers to a committee of directors under subsection (1), the directors are responsible for the exercise of that power by the committee unless the directors believed on

reasonable grounds before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act and the articles.

Secretary

Public company required to have a secretary

135. (1) A public company shall have a secretary who—

(a) subject to subsections (2) and (3), shall be appointed by the director or directors, or if provision is made in the by-laws of the company for the appointment, in accordance with that provision; and

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

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

(3) For the purpose of this section a person—

(a) who, on the commencement date, held the office of secretary, assistant secretary or deputy secretary of a public company;

(b) who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a public company;

(c) who is a member in good standing of the Institute of Chartered Accountants of Montserrat, the Institute of Chartered Secretaries and Administrators or the Chartered Institute of Public Finance and Accountancy; or

(d) who is an attorney-at-law,

may, unless the directors have reasonable cause to believe otherwise, be assumed by the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(4) A public company that carries on business for more than one month without complying with subsection (1), commits an offence and is liable on summary conviction to a fine of $20,000.

Notice of change of secretary

136. (1) A company shall file a notice in the approved form of—

(a) a change in the secretary of the company, whether as the result of the appointment of a person as secretary or a person ceasing to hold office as secretary, or both;

(b) a change in the name or address of the secretary of the company.

(2) A notice under subsection (1) shall be filed within fourteen days of—

(a) the change occurring, in the case of the appointment of the secretary or the secretary ceasing to hold office; or

(b) the company first becoming aware of the change, in the case of the death of the secretary or a change in the name or address of the secretary.

(3) A company that fails to comply with subsection (1) or (2), commits an offence and is liable on summary conviction to a fine of $20,000.

Duties of secretary

137. The secretary of a public company has the following duties—

(a) maintaining the company's register of members, directors and charges;

(b) preparing for meetings of members and directors, including preparing and sending out notices of each meeting;

(c) preparing and keeping minutes of meetings of the members and the directors, including meetings of each committee of members or directors;

(d) ensuring that the company files all returns, notices and other documents required to be filed by this Act or the Regulations; and

(e) such other duties as may be specified in the articles or by-laws or in the instrument appointing him.

By-laws and Organisational Meeting

Power to make by-laws

138. (1) Unless the articles, by-laws or a unanimous members' agreement provide otherwise, the directors of a company may by resolution make, amend, or repeal a by-law for the regulation of the business or affairs of the company.

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

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

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

(b) the by-law, amendment or repeal ceases to be effective under subsection (4),

and, if the by-law, amendment or repeal is confirmed or amended by the members, it continues in effect in the form in which it was confirmed or amended.

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

(5) A shareholder who is entitled to vote at a meeting of members may make a proposal to make, amend or repeal a by-law.

Organisational meeting

139. (1) After the incorporation of a company, a meeting of the directors of the company shall be held at which the directors may—

(a) make by-laws;

(b) adopt forms of share certificates and corporate records;

(c) authorise the issue of shares;

(d) appoint an auditor to hold office until the first annual meeting of members;

(e) make banking arrangements; and

(f) transact any other business.

(2) An incorporator or a director may call a meeting of directors under subsection (1) by giving not less than seven clear days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

(3) Subsection (1) does not apply to a company to which a certificate of merger or consolidation has been issued under section 192(4).

Appointment, Removal and Resignation of Directors

Persons disqualified for appointment as director

140. (1) A person is disqualified from being appointed as a director of a company if the person—

(a) is an individual who is under eighteen years of age;

(b) is an undischarged bankrupt;

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

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

(e) in respect of a particular company, disqualified by the articles from being a director of the company.

(2) A person who acts as a director of a company whilst disqualified under subsection (1) is deemed to be a director of the company for the purposes of a provision of this Act that imposes a duty or obligation on a director.

Shareholding not required

141. Unless the articles of a company provide otherwise, a director of a company need not hold shares in the company.

Consent to act as director

142. A person shall be appointed as the director or alternate director of a company or nominated as a reserve director only if he consents in writing to the appointment.

Appointment of directors

143. **(1)** Directors of a company may be appointed—

(a) unless the articles provide otherwise, by the members; or

(b) if the articles permit, by the directors.

(2) A director is appointed for such term as may be specified on appointment.

(3) Unless the articles of a company provide otherwise, the directors of a company may appoint a director to fill a vacancy on the board.

(4) For the purposes of subsection (3)—

(a) there is a vacancy on the board if a director dies or in the case of a director that is not an individual, ceases to exist, or otherwise ceases to hold office as a director before the expiration of his term of office; and

(b) the directors may not appoint a director for a term exceeding the term that remained when the person who has ceased to be a director ceased to hold office.

(5) A director holds office until—

(a) his or her successor takes office; or

(b) his or her earlier death, resignation or removal.

(6) If a company has only one member who is an individual and that member is also the sole director of the company, despite the articles, the member may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 140 as a reserve director of the company to act in that director's place in the event of the director's death.

(7) The nomination of a person as a reserve director of the company ceases to have effect if—

(a) before the death of the sole member—

(i) the person resigns as reserve director; or

(ii) the sole member revokes the nomination in writing; or

(b) the sole member who nominated the person as a reserve director ceases to be the sole member and director of the company for any reason other than his death.

Removal of directors

144. (1) A director of a company may be removed from office by resolution of the members of the company.

(2) Subject to the articles, a resolution under subsection (1) may only be passed—

(a) at a meeting of the members called for the purpose of removing the director; or

(b) by a written resolution passed by at least 75% of the votes of the members of the company who are entitled to vote.

(3) The notice of a meeting called under subsection (2)*(a)* shall state that the purpose of the meeting is for, or includes the removal of a director.

(4) If the holders of any class of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class of shares.

(5) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed, or, if the vacancy is not so filled, it may be filled by the directors in accordance with section 143(3).

Resignation of director

145. (1) A director of a company may resign office by giving written notice of his resignation to the company and his resignation takes effect from—

(a) the date the company receives the notice of resignation; or

(b) a later date specified in the notice.

(2) A director of a company shall resign immediately if he is disqualified to act as a director under section 140.

Liability of former directors

146. A director who vacates office is liable under any provision of this Act that impose liabilities on a director for an act or omission or decisions made while he was a director.

Validity of acts of director

147. The acts of a person as a director are valid despite—

(a) a defect in his appointment as a director; or

(b) his disqualification to act as a director under section 140.

Register of directors

148. (1) A company shall maintain a register of directors setting out—

(a) the name and address of—

(i) each director of the company; or

(ii) each person who is nominated as reserve director of the company;

(b) the date on which each director is appointed, or nominated as a reserve director, of the company;

(c) the date on which each director ceased to be a director of the company;

(d) the date on which a person's nomination as a reserve director ceased to have effect; and

(e) other information as may be prescribed.

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

(3) The register of directors is *prima facie* evidence of the matters directed or authorised by this Act to be set out in the register of directors.

Notice of change of directors

149. (1) A company shall file a notice in the approved form of—

(a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

(b) a change in the name or address of a director of the company.

(2) A notice under subsection (1) shall be filed within fourteen days of—

(a) the change occurring, in the case of the appointment of a director or a director ceasing to hold office; or

(b) the company first becoming aware of the change, in the case of the death of a director or a change in the name or address of a director.

(3) A company that fails to comply with subsection (1) or (2), commits an offence and is liable on summary conviction to a fine of $20,000.

Emoluments of directors

150. Subject to the articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered to the company.

Duties of Directors and Conflicts

Duties of directors

151. (1) A director of a company, in exercising his powers and performing his duties, shall—

(a) act—

(i) honestly and in good faith; and

(ii) subject to subsections (2), (3) and (4), in what the director believes to be in the best interests of the company; and

(b) exercise independent judgment.

(2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if the articles permit, act in a manner which the director believes is in the best interests of the company's parent even if it may not be in the best interests of the company.

(3) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director—

(a) if the articles permit; and

(b) with the prior agreement of the shareholders, other than its parent,

act in a manner which the director believes is in the best interests of that company's parent even if it may not be in the best interests of the company.

(4) A director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if the articles permit, act in a manner which the director believes is in the best

interests of a shareholder even if it may not be in the best interests of the company.

Powers to be exercised for proper purpose

152. A director shall exercise his powers for a proper purpose and shall not act or agree to the company acting in a manner that contravenes this Act or the articles of the company.

Standard of care

153. A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation—

(a) the nature of the company;

(b) the nature of the decision; and

(c) the position of the director and the nature of the responsibilities undertaken by him.

Reliance on records and reports

154. **(1)** Subject to subsection (2), a director of a company, when exercising his powers or performing his duties, is entitled to rely on books, records, financial statements and other information prepared or supplied and the register of members and on professional or expert advice given by—

(a) an employee of the company who the director believes, on reasonable grounds, is reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert on matters which the director believes, on reasonable grounds, are within the person's professional or expert competence; and

(c) any other director or committee of directors on which the director did not serve, in relation to matters within the director's or committee's designated authority.

(2) Subsection (1) applies only if the director—

(a) acts in good faith;

(b) makes proper inquiry if the need for the inquiry is indicated by the circumstances; and

(c) is not aware that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

Disclosure of interest

155. (1) Subject to subsection (3), a director of a company shall, immediately after becoming aware of the fact that he is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company.

(2) The Regulations may prescribe circumstances in which a director has an interest in a transaction for the purposes of this section and section 156.

(3) A director of a company is not required to comply with subsection (1) if—

(a) the transaction or proposed transaction is between the director and the company; and

(b) the transaction or proposed transaction is, or is to be entered into, in the ordinary course of the company's business and on usual terms and conditions.

(4) For the purposes of subsection (1), a disclosure to the board to the effect that a director is a member, director, officer or trustee of another named company or other person and is to be regarded as interested in a transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(5) Subject to section 156(1), a director's failure to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.

(6) For the purposes of subsection (1), a director makes a disclosure to the board only if he brings it to the attention of each director on the board.

(7) A director who fails to comply with subsection (1), commits an offence and is liable on summary conviction to a fine of $10,000.

Avoidance by company of transactions in which director is interested

156. (1) Subject to this section, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was—

(a) disclosed to the board in accordance with section 155 before the company entered into the transaction; or

(b) not required to be disclosed under section 155(3).

(2) Despite subsection (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if—

(a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or

(b) the company received fair value for the transaction.

(3) For the purposes of subsection (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.

(4) Subject to the articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may—

(a) vote on a matter relating to the transaction;

(b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and

(c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.

(5) The avoidance of a transaction under subsection (1) does not affect the title or interest of a person in, or to property which that person has acquired if the property was acquired—

(a) from a person other than the company ("the transferor");

(b) for valuable consideration; and

(c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

Proceedings of directors and miscellaneous provisions

Meetings of directors

157. (1) Subject to the articles, the directors of a company may meet at a time, manner and place that they determine within or outside Montserrat.

(2) Subject to the articles, a director may convene a meeting of directors.

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

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

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

Notice of meeting of directors

158. (1) Subject to a requirement as to notice in the articles, a director shall be given reasonable notice of a meeting of directors and the notice must

include the date, time and place of the meeting and the matters to be discussed.

(2) Despite subsection (1), subject to the articles, a meeting of directors held in contravention of subsection (1) is valid if each director, or the majority of directors specified in the articles entitled to vote at the meeting, waive the notice of the meeting.

(3) For the purposes of subsection (2), a director's presence at the meeting constitutes his waiver of notice.

(4) The inadvertent failure to give notice of a meeting to a director in accordance with subsection (1), or the fact that a director has not received the notice, does not invalidate the meeting.

Quorum for meetings of directors

159. (1) The quorum for a meeting of directors is that fixed by the articles.

(2) If a quorum is not fixed by the articles, a meeting of directors is properly constituted if, at the commencement of the meeting, half of the total number of directors are present in person or by alternate.

(3) No business may be transacted at a meeting of directors if a quorum is not present.

Resolution of directors

160. (1) A resolution of directors may be passed—

(a) at a meeting of directors; or

(b) subject to the articles, as a written resolution.

(2) Subject to the articles, a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.

(3) A written resolution is a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for a notice—

(a) by the majority of the votes of the directors entitled to vote on the resolution as specified in the articles; or

(b) in the absence of any provision in the articles, by each director who is entitled to vote on the resolution.

(4) A written resolution may consist of several documents, including written electronic communications, in the same form, each signed by a director.

Appointment of alternate directors

161. (1) Subject to the articles of a company, a director of the company may appoint as an alternate, another director or person who is not disqualified for appointment as a director under section 140(1) to—

(a) exercise the appointing director's powers; and

(b) carry out the appointing director's responsibilities,

in relation to taking decisions by the directors in the absence of the appointing director.

(2) The appointing director may terminate an alternate's appointment.

(3) The appointment and termination of an alternate director shall be in writing and the appointing director shall give a company written notice of an appointment or termination of an alternate director—

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

(b) if no period is specified in the articles, as soon as reasonably practicable.

(4) The termination of the appointment of an alternate director takes effect when a company receives written notice of the termination.

(5) An alternate director—

(a) has no power to appoint an alternate of the appointing director or of the alternate director; and

(b) does not act as an agent of, or for the appointing director.

Rights and duties of alternate directors

162. (1) An alternate director has the same rights as the appointing director in relation to a directors' meeting and any written resolution circulated for written consent.

(2) An alternate director's exercise of the power of an appointing director in relation to decision making by the directors, is as effective as if the powers were exercised by the appointing director.

(3) An alternate director is liable for his acts and omissions as alternate director and sections 151 to 156 apply to an alternate director.

Agents

163. (1) The directors of a company may appoint any person, including a director, as an agent of the company.

(2) Subject to the articles of a company, an agent of a company has the authority and powers of the directors, provided for in the articles or in the resolution of directors appointing the agent, except the authority or power to—

(a) amend the articles;

(b) change the company's registered office or agent;

(c) designate a committee of directors;

(d) delegate powers to a committee of directors;

(e) appoint or remove a director;

(f) appoint or remove an agent;

(g) fix a director's emoluments;

(h) approve a plan of merger, consolidation or arrangement;

(i) make a determination under section 52(1) that the company will, immediately after a proposed distribution, satisfy the solvency test; or

(j) authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Montserrat.

(3) If the directors appoint a person as an agent of the company, the directors may authorise the agent to appoint a substitute or delegate to exercise the powers conferred on the agent by the company.

(4) The directors may—

(a) remove an agent appointed under subsection (1); and

(b) revoke or vary a power conferred on an agent under subsection (2).

Indemnification

164. (1) Subject to subsection (2) and its articles, a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, a person who—

(a) is or was a party or is threatened to be made a party to a threatened, pending or completed civil, criminal, administrative or investigative proceeding in his capacity as a director of the company; or

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

(2) Subsection (1) applies to a person referred to in that subsection only if the person—

(a) acted honestly and in good faith and in what he believed to be in the best interests of the company; and

(b) in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) For the purposes of subsection (2), a director acts in the best interests of the company if he acts in the best interests of—

(a) the company's parent, in the circumstances specified in section 151(2) or (3); or

(b) a shareholder of the company, in the circumstances specified in section 151(4).

(4) The termination of proceedings by a judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not create a presumption that the person—

(a) did not act honestly and in good faith and with a view to the best interests of the company; or

(b) had reasonable cause to believe that his conduct was unlawful.

(5) A company may pay expenses, including legal fees, incurred by a director in defending a legal, administrative or investigative proceedings in advance of the final disposition of the proceedings on receipt of an undertaking by or on behalf of the director to repay the amount if it shall be determined that the director is not entitled to be indemnified by the company in accordance with subsection (1).

(6) A company may pay expenses, including legal fees, incurred by a former director in defending legal, administrative or investigative proceedings in advance of the final disposition of the proceedings on receipt of an undertaking by or on behalf of the former director to repay the amount if—

(a) it is determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1); and

(b) on other terms and conditions, if any, that the company deems appropriate.

(7) The indemnification and advancement of expenses provided by or granted under this section is not exclusive of other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise—

(a) as to acting in the person's official capacity; and

(b) as to acting in another capacity while serving as a director of the company.

(8) If a person referred to in subsection (1) successfully defends proceedings referred to in subsection (1), the person is entitled to be indemnified against expenses, including legal fees, and judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(9) A company shall not indemnify a person in breach of subsection (2) and any indemnity given in breach of that subsection is void and of no effect.

Insurance

165. A company may purchase and maintain insurance in relation to a person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 164.

Disqualification of Directors

Disqualification order

166. **(1)** If, on the application of the Registrar, the Court determines that an individual is unfit to be concerned in the management of a company, it may order that, without the prior leave of the Court, the person may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period—

(a) beginning—

(i) with the date of the order; or

(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years,

as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Montserrat or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Registrar shall give that individual not less than ten days' notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a company, the Registrar and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

(5) The Registrar shall register any order made under this section in a Register of Disqualified Directors to be maintained by him for that purpose.

(6) A person commits an offence if, during the period for which an order made under subsection (1) against him is in force, the person acts as the director of a company or is, in any way, directly or indirectly, concerned with the management of a company.

(7) A person who commits an offence under subsection (6) is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

PART 7

REGISTRATION OF CHARGES

Interpretation for this Part

167. (1) In this Part—

"charge" means any form of security interest over property, wherever situated, other than an interest arising by operation of law;

"effective date" means—

(a) in the case of a former Act company, the date the former Act company is re-registered as a company under Schedule 2;

(b) in the case of a company that is continued under this Act, the date of the company's continuation; or

(c) in any other case, the date on which this Act comes into operation;

"liability" includes contingent and prospective liabilities;

"property" includes future property;

"relevant charge" means a charge created on or after the effective date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated which—

(a) was, immediately before its acquisition, the subject of a charge; and

(b) remains subject to that charge after its acquisition.

(3) For the purposes of subsection (2), the date of creation of the charge is deemed to be the date the property is acquired.

Creation of charges by a company

168. (1) Subject to its articles, a company may, by an instrument in writing, create a charge over its property.

(2) The governing law of a charge created by a company may be the law of the jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent of, and in accordance with, the requirements of the governing law.

(3) If a company acquires property subject to a charge—

(a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

(b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the company acquires the property subject to the charge.

Company to maintain register of charges

169. (1) A company shall maintain a register of each relevant charge created by the company over its property setting out—

(a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;

(b) a short description of the liability secured by the charge;

(c) a short description of the property charged;

(d) the name and address of the trustee for the security or, if there is no trustee, the name and address of the chargee;

(e) unless the charge is a security to bearer, the name and address of the holder of the charge; and

(f) details of a prohibition or restriction, if any, contained in the instrument creating the charge on the company's power to create a future charge ranking in priority to or equally with the charge.

(2) A company shall keep a copy of the register of charges—

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

(b) in the case of any other company, at its registered office.

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

Registration of charges

170. **(1)** If a company creates a relevant charge over its property, an application to the Registrar to register the charge may be made by—

(a) the company, or an attorney-at-law in Montserrat authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing an application in the approved form specifying the particulars of the charge.

(3) The Registrar shall keep, with respect to each company, a Register of Registered Charges containing the information prescribed.

(4) If the Registrar is satisfied that the requirements of this Part as to registration are complied with, on receipt of an application under subsection (2), the Registrar shall immediately—

(a) register the charge in the Register of Registered Charges kept by him for that company;

(b) issue a certificate of registration of the charge; and

(c) send a copy of the certificate of registration to the company and to the chargee.

(5) The Registrar shall state the date and time on which a charge is registered—

(a) in the Register of Registered Charges; and

(b) on the certificate of registration.

(6) A certificate issued under subsection (4) is conclusive evidence that—

(a) the requirements of this Part as to registration have been complied with; and

(b) the charge referred to in the certificate was registered on the date and time stated in the certificate.

(7) A charge that is not registered under this section is void against a liquidator of the company.

Variation of registered charge

171. **(1)** If there is a variation in the terms of a charge registered under section 170, an application for the variation to be registered may be made by—

(a) the company, or an attorney-at-law in Montserrat authorised to act on its behalf; or

(b) the chargee, or a person authorised to act on his behalf.

(2) An application under subsection (1) is made by filing an application in the approved form.

(3) On receipt of an application under subsection (2), the Registrar shall immediately—

(a) register the variation of the charge;

(b) issue a certificate of variation; and

(c) send a copy of the certificate of variation to the company and the chargee.

(4) The Registrar shall state in the Register of Registered Charges and on the certificate of variation, the date and time on which a variation of charge was registered.

(5) A certificate issued under subsection (3) is conclusive evidence that the variation referred to in the certificate was registered on the date and time stated in the certificate.

Satisfaction or release of charge

172. (1) A notice of satisfaction or release in the approved form may be filed under this section if—

(a) each liability secured by the charge registered under section 170 is paid or satisfied in full; or

(b) a charge registered under section 170 ceases to affect a company's property.

(2) A notice of satisfaction or release shall—

(a) state whether—

(i) the charge is paid or satisfied in full or;

(ii) the charge ceases to affect the company's property; and

(b) if the charge ceases to affect the company's property, identify the property of the company that the charge ceases to affect, stating whether this is the whole or part of the company's property.

(3) A notice of satisfaction or release may be filed by—

(a) the company or an attorney-at-law in Montserrat authorised to act on behalf of the company;

(b) a person eligible to act as the registered agent of a company in accordance with section 79; or

(c) an attorney-at-law in Montserrat, acting on behalf of the chargee.

(4) If the notice of satisfaction or release is filed by or on behalf of the company it shall be—

(a) signed by the chargee; or

(b) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice.

(5) If the Registrar is satisfied that a notice filed under subsection (1) complies with subsection (2) or (4), as the case may be, the Registrar shall immediately—

(a) register the notice; and

(b) issue a certificate of satisfaction, release or partial satisfaction or release of the charge and send a copy of the certificate of the satisfaction, release or partial release of the charge to the company and to the chargee.

(6) The Registrar shall state the date and time on which the notice filed under subsection (1) was registered in—

(a) the Register of Registered Charges; and

(b) on a certificate issued under subsection (5).

(7) From the date and time stated in the certificate issued under subsection (5), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

Filing of application under section 170 or 171 by or on behalf of chargee

173. (1) An application for the registration of a charge under section 170 or for the variation of a charge under section 171 made by the chargee, or a person authorised to act on behalf of the chargee, may only be filed by—

(a) a person eligible to act as the registered agent of a company in accordance with section 79; or

(b) an attorney-at-law in Montserrat, acting on behalf of the chargee or the person authorised to act on behalf of the chargee.

(2) Subject to subsection (3), an application or notice referred to in subsection (1) shall be accompanied by a written notice in the approved form stating the full name and address of a person in Montserrat who is authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(3) Subsection (2) does not apply to a chargee that is—

(a) a company incorporated or continued under this Act;

(b) a foreign company registered under Part 12;

(c) a limited partnership formed under the Limited Partnership Act (Cap. 11.10); or

(d) an individual.

(4) A chargee may give the Registrar written notice in the approved form of a change in the person in Montserrat authorised by the chargee to accept, on its behalf, documents required to be sent to the chargee by the Registrar under this Part.

(5) Only a person specified in subsection (1)*(a)* or *(b)* may file a notice under subsection (4).

(6) The Registrar complies with this Part in relation to sending a document to a chargee, by sending the document to the person in Montserrat most recently notified to the Registrar as the person authorised by the chargee to accept a document on its behalf.

Priority of relevant charges

174. (1) Subject to subsection (3), a relevant charge on a company's property that is registered in accordance with section 170 has priority over—

(a) a relevant charge on the property that is subsequently registered in accordance with section 170; and

(b) a relevant charge on the property that is not registered in accordance with section 170.

(2) Charges created on or after the effective date that are not registered shall rank among themselves in the order in which they would rank if this section was not in force.

(3) In the event of a conflict between the priority of relevant charges under this Act and under the Registered Land Act, the provisions of the Registered Land Act prevail.

Priority of other charges

175. A charge created before the effective date—

(a) shall continue to rank in the order in which it would have ranked had section 170 not come into force; and

(b) if the charge would have taken priority over a charge created on or after the effective date, that charge shall continue to take priority after the effective date.

Exceptions to sections 174 and 175

176. Despite sections 174 and 175—

(a) the order of priorities of charges is subject to—

(i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or

(ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and

(b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the company's power to create a future charge ranking in priority to, or equally with the charge.

PART 8

RECEIVERS AND RECEIVER-MANAGERS

Disqualified receivers

177. (1) A person may not be appointed a receiver or receiver-manager of any assets of a company, and may not act as such a receiver or receiver-manager, if the person—

(a) is a body corporate;

(b) is an undischarged bankrupt; or

(c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1), another person may be appointed in his place by the persons who are entitled to make the appointment, or by the Court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the commencement date.

Functions of receivers and receiver-managers

178. (1) A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the Court, he may not carry on the business of the company.

(2) A receiver of a company may, if he is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he is appointed.

Directors' powers stopped

179. When a receiver-manager of a company is appointed by the Court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty under court direction

180. A receiver or receiver-manager of a company appointed by the Court shall act in accordance with the directions of the Court.

Duty under instrument

181. A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with that instrument and any directions of the Court given under section 183.

Duty of care

182. A receiver or receiver-manager of a company appointed under an instrument shall—

(a) act honestly and in good faith; and

(b) deal with any property of the company in his possession or control in a commercially reasonable manner.

Directions by Court

183. Upon an application by a receiver or receiver-manager of a company, whether appointed by the Court or under an instrument, or upon an application by any interested person, the Court may make any order it thinks fit, including—

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

(b) an order determining the notice to be given by any person, or dispensing with notice to any person;

(c) an order declaring the rights of persons before the Court or otherwise, or directing any person to do, or abstain from doing, anything;

(d) an order fixing the remuneration of the receiver or receiver-manager;

(e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed—

(i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property or business of the company;

(ii) to relieve any such person from any default on such terms as the Court thinks fit; and

(iii) to confirm any act of the receiver or receiver-manager; and

(f) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receivers, etc.

184. A receiver or receiver-manager of a company shall—

(a) immediately give notice of his appointment to the Registrar, and of his discharge;

(b) take into his custody and control the property of the company in accordance with the Court order or instrument under which he is appointed;

(c) open and maintain a bank account in his name as receiver or receiver-manager of the company for the moneys of the company coming under his control;

(d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;

(e) keep accounts of his administration, which shall be available during usual business hours for inspection by the directors of the company;

(f) prepare financial statements of his administration at such intervals and in such form as are prescribed;

(g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph *(f)*; and

(h) file with the Registrar a copy of any financial statement mentioned in paragraph *(f)* and any final account mentioned in paragraph *(g)* within fifteen days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

Liability of receivers, etc.

185. (1) A receiver of assets of a company appointed by the Court or under the powers contained in any instrument—

(a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and

(b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver, but nothing in this subsection limits any right to an indemnity that he would have, apart from this subsection, or limits his liability

on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the Court may, on application being made to it—

(a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and

(b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(3) Subsection (1) applies to a receiver appointed before or after the commencement of this Act, but does not apply to contracts entered into before that date.

Notice of receivership

186. If a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order of goods or business letter issued by, or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver-manager has been appointed.

Floating charges priorities

187. (1) If a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge or if possession is taken, by or on behalf of any debenture holders of a company, of any property of the company that is subject to a floating charge, then, if the company is not at the time in the course of liquidation, any preferential debts within the meaning of section 244 shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped, as far as can be, out of the assets of the company that are available for the payment of general creditors.

Statement of affairs

188. (1) If a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 189 referred to as the "receiver", is appointed by the Court or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 189—

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) within fourteen days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, there shall be made out by the company and submitted to the receiver a statement in accordance with section 189 as to the affairs of the company;

(c) the receiver shall, within two months after receipt of the statement, send to the—

(i) Registrar, and, if the receiver was appointed by the Court, to the Court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of his comments, if any, thereon;

(ii) company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;

(iii) trustee of the trust deed, a copy of the statement and those comments, if any; and

(iv) holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.

(2) The receiver shall, within two months or such longer period as the Court may allow after—

(a) the expiration of the period of twelve months from the date of his appointment, and after every subsequent period of twelve months; and

(b) he ceases to act as receiver of the assets of the company,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show the—

(a) receiver's receipts and payments during the period of twelve months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act; and

(b) aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, if subsection (1) applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs *(b)* and *(c)* of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the company is being wound up, this section and section 189 apply even though the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

Contents of statement

189. (1) The statement as to the affairs of a company required by section 188 to be submitted to the receiver or his successor shall show, as at the date of the receiver's appointment—

(a) the particulars of the company's assets, debts and liabilities;

(b) the names, addresses and occupations of the company's creditors;

(c) the security interests held by the company's creditors respectively;

(d) the dates when the security interests were respectively created; and

(e) such further or other information as is prescribed.

(2) The statement of affairs of the company shall be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director or by such persons specified in subsection (3) as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement.

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

(a) a person who is or has been an officer of the company;

(b) a person who has taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) a person who is in the employment of the company, or has been in the employment of the company within that year, and, in the opinion of the receiver, is capable of giving the information required; or

(d) a person who is, or has been within that year an officer of, or in the employment of, an affiliate.

(4) Any person making or verifying the statement of affairs of a company, or any part of it, shall be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the Court.

PART 9

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

Interpretation for purposes of this Part

190. (1) In this Part—

"consolidated company" means the new company that results from a consolidation;

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

"constituent company" means an existing company that is participating in a merger or consolidation;

"merger" means the merging of two or more constituent companies into one of the constituent companies;

"parent company" means a company that owns at least 90% of the outstanding shares of each class of shares in another company;

"subsidiary company" means a company at least 90% of whose outstanding shares of each class of shares are owned by another company; and

"surviving company" means the constituent company into which one or more other constituent companies are merged.

(2) The definitions of **"subsidiary"** and **"parent"** specified in section 2 do not apply to this Part.

Approval of merger and consolidation

191. (1) Two or more companies may merge or consolidate in accordance with this section.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires—

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares, specifying each class entitled to vote on the merger or consolidation; and

(ii) a specification of each class, if any, entitled to vote as a class;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination of each; and

(d) in respect of a merger, a statement of any amendment to the articles of the surviving company to be brought about by the merger.

(3) In the case of a consolidation, the plan of consolidation shall have annexed to it, articles that comply with section 7, to be adopted by the consolidated company.

(4) Some or all shares of the same class of shares in each constituent company may be converted into a particular or mixed kind of assets and other shares of the class, or all shares of other classes of shares, may be converted into other assets.

(5) The following apply in respect of a merger or consolidation under this section—

(a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of each class of shares that are entitled to vote on the merger or consolidation as a class if the articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles, would entitle the class to vote on the proposed amendment as a class;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

Registration of merger and consolidation

192. (1) After approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company containing—

(a) the plan of merger or consolidation;

(b) the date on which the articles of each constituent company were registered by the Registrar; and

(c) the manner in which the merger or consolidation was authorised with respect to each constituent company.

(2) The articles of merger or consolidation shall be filed with the Registrar with—

(a) in the case of a merger, any resolution to amend the articles of the surviving company; and

(b) in the case of a consolidation, articles for the consolidated company that comply with section 7.

(3) If the Registrar is satisfied that the requirements of this Act, in respect of merger or consolidation, have been complied with and that the proposed name of the surviving or consolidated company complies with the requirements of section 14 and is a name under which the company could be registered under section 15, the Registrar shall—

(a) register—

(i) the articles of merger or consolidation; and

(ii) in the case of a merger, an amendment to the articles of the surviving company or, in the case of a consolidation, the articles of the consolidated company;

(b) in the case of a consolidation, allot a unique number to the consolidated company; and

(c) issue a certificate of merger or consolidation in the approved form and, in the case of a consolidation, a certificate of incorporation of the consolidated company.

(4) A certificate of merger or consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

Merger with subsidiary

193. (1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of a company, in accordance with this section.

(2) The directors of the parent company shall approve a written plan of merger containing—

(a) the name of each constituent company and the name of the surviving company;

(b) with respect to each constituent company—

(i) the designation and number of outstanding shares of each class of shares; and

(ii) the number of shares of each class of shares in each subsidiary company owned by the parent company;

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other assets, or a combination thereof; and

(d) a statement of any amendment to the articles of the surviving company to be brought about by the merger.

(3) Some or all shares of the same class of shares in each company to be merged may be converted into assets of a particular or mixed kind and other shares of the class, or all shares of other classes of shares, may be converted into other assets but, if the parent company is not the surviving company, shares of each class of shares in the parent company may only be converted into similar shares of the surviving company.

(4) The parent company shall give a copy of the plan of merger or an outline of the plan of merger to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain—

(a) the plan of merger;

(b) the date on which the articles of each constituent company were registered by the Registrar; and

(c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline of the plan of merger was made available to, or waived by, the members of each subsidiary company.

(6) The articles of merger shall be filed with the Registrar together with any resolution to amend the articles of the surviving company.

(7) If the Registrar is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with section 14 and is a name under which the company could be registered under section 15, the Registrar shall—

(a) register—

(i) the articles of merger; and

(ii) any amendment to the articles of the surviving company; and

(b) issue a certificate of merger.

(8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger.

Effect of merger or consolidation

194. (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on a date subsequent to the registration of the articles of merger or consolidation, not exceeding thirty days, as stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective—

(a) the surviving company or the consolidated company insofar as is consistent with its articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the articles of the surviving company are automatically amended to the extent, if any, that changes in its articles are contained in the articles of merger;

(c) in the case of a consolidation, the articles filed with the articles of consolidation are the articles of the consolidated company;

(d) assets of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each constituent company.

(3) If a merger or consolidation occurs—

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent of a constituent company, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent of a constituent company, are abated or discontinued by the merger or consolidation, but—

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be; or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register of Companies—

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

Merger or consolidation with foreign company

195. (1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Montserrat in accordance with this section, including if one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside Montserrat are incorporated.

(2) The following apply in respect of a merger or consolidation under this section—

(a) a company shall comply with the provisions of this Act with respect to merger or consolidation and a company incorporated under the laws of a jurisdiction outside Montserrat shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Montserrat, it shall file—

(i) an agreement that a service of process may be effected on it in Montserrat in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company that is a company registered under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company that is a company registered under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of its registered agent as its agent to accept service of process in proceedings referred to in sub-paragraph (i);

(iii) an agreement that it will promptly pay to a dissenting member of a constituent company that is a company

registered under this Act the amount, if any, which the dissenting member is entitled to under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction if it is incorporated; or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 194 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Montserrat, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 194 except insofar as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is a company incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on a subsequent date not exceeding thirty days, as is stated in the articles of merger or consolidation, but if the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside Montserrat, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

Disposition of assets

196. Subject to the articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge or other encumbrance or the enforcement of a sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets of the company if not made in the usual or regular course of the business carried on by the company, shall be made as follows—

(a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors;

(b) on approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be authorised by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member,

whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

Redemption of minority shares

197. **(1)** Subject to the articles of a company—

(a) members of the company holding 90% of the votes of the outstanding shares entitled to vote; and

(b) members of the company holding 90% of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may give a written instruction to the company directing it to redeem the shares held by the remaining members.

(2) On receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are, by their terms, redeemable.

(3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

Arrangement

198. (1) For the purposes of sections 198 and 199, **"arrangement"** means—

(a) an amendment to the articles;

(b) a re-organisation or reconstruction of a company;

(c) a merger or consolidation of one or more companies that are companies registered under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(d) a separation of two or more businesses carried on by a company;

(e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination of each;

(f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination of each;

(g) a dissolution of a company; or

(h) any combination of any of the things specified in paragraphs *(a)* to *(g)*.

(2) If the directors of a company determine that it is in the best interests of the company or the creditors or members of a company, the directors of the company may approve a plan of arrangement that contains details of the proposed arrangement, even if the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

(3) On approval of the plan of arrangement by the directors, the company shall apply to the Court for approval of the proposed arrangement.

(4) The Court may, on an application under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of twenty days immediately following the date of the order, and in making the order the Court may—

(a) determine what notice, if any, of the proposed arrangement is to be given to any person;

(b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 200;

(d) conduct a hearing and permit an interested person to appear; and

(e) approve or reject the plan of arrangement as proposed or with the amendments it may direct.

(5) If the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made to the plan of arrangement.

(6) The directors of the company, on confirming the plan of arrangement, shall—

(a) give notice to the persons to whom the order of the Court requires notice to be given; and

(b) submit the plan of arrangement to those persons for approval, if any, as the order of the Court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain—

(a) the plan of arrangement;

(b) the order of the Court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.

(8) The articles of arrangement shall be filed with the Registrar who shall register them.

(9) On the registration of the articles of arrangement, the Registrar shall issue a certificate certifying that the articles of arrangement have been registered.

(10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on a date subsequent to the date of registration, not exceeding thirty days, as is stated in the articles of arrangement.

Arrangement when company in voluntary liquidation

199. The voluntary liquidator of a company may approve a plan of arrangement under section 198 in which case, that section applies as if **"voluntary liquidator"** was substituted for **"directors"** and subject to such other modifications as are appropriate.

Rights of dissenters

200. (1) A member of a company is entitled to payment of the fair value of his shares on dissenting from—

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including—

(i) a disposition made in accordance with an order of the Court having jurisdiction in the matter; or

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition;

(d) a redemption of his shares by the company under section 197; and

(e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at

which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required—

(a) from a member to whom the company did not give notice of the meeting in accordance with this Act; or

(b) the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within twenty days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except a member who voted for, or consented in writing to, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within twenty days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating—

(a) his name and address;

(b) the number and classes of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares,

and a member who elects to dissent from a merger under section 193 shall give to the company a written notice of his decision to elect to dissent within twenty days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 193.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) On the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within seven days immediately following the date of the expiration of the period within which a member may give his notice of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later—

(a) the company or, in the case of a merger or consolidation, the surviving company or the consolidated company shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and

(b) if, within thirty days immediately following the date on which an offer under sub-paragraph *(a)* is made, the company

making the offer and the dissenting member agree on the price to be paid for his shares,

the company shall pay to the member the amount in money on the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of thirty days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within twenty days immediately following the date on which the period of thirty days expires, the following shall apply—

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers together shall designate an appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day before the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

(d) the company shall pay to the member, the amount in money upon the surrender by him, of the certificates representing his shares.

(10) Shares acquired by the company under subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for re-issue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company under section 197 and in such case the written offer to be made to the dissenting member under subsection (8) shall be made within seven days immediately following the direction given to a company under section 197 to redeem its shares.

Schemes of arrangement

201. (1) If a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of

creditors, or of the members or class of members, as the case may be, to be called in the manner the Court directs.

(2) An application under subsection (1) may be made by—

(a) the company;

(b) a creditor of the company;

(c) a member of the company; or

(d) if the company is being wound up, by the liquidator.

(3) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding—

(a) on all the creditors or class of creditors, or the members or class of members, as the case may be, and on the company; or

(b) in the case of a company that is being wound up, on the liquidator and on each person who is liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court, made under subsection (3), takes effect when a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to each copy of the company's articles issued after the order has been made.

(6) In this section, **"arrangement"** includes a re-organisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(7) The information and explanations to be contained in, or to accompany, a notice calling a meeting under this section may be prescribed.

(8) If the Court makes an order with respect to a company under this section, sections 190 to 200 shall not apply to the company.

(9) A company that fails to comply with subsection (5), commits an offence and is liable on summary conviction to a fine of $20,000.

PART 10

CONTINUATION

Foreign company may continue under this Act

202. (1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part if the laws

of the jurisdiction in which the foreign company is registered permit the continuation of the company in Montserrat.

(2) A foreign company may not continue as a company incorporated under this Act if—

(a) it is in liquidation or subject to equivalent insolvency proceedings in another jurisdiction;

(b) a receiver or manager is appointed in relation to its assets;

(c) it has entered into an arrangement with its creditors, that has not been concluded; or

(d) an application made to a Court in another jurisdiction for the liquidation of the company or for the company to be subject to equivalent insolvency proceedings has not been determined.

Application to continue under this Act

203. (1) A foreign company shall apply to continue under this Act by filing—

(a) a certified copy of its certificate of incorporation, or other equivalent document that evidences its incorporation, registration or formation;

(b) articles that comply with subsections (2) and (3);

(c) evidence satisfactory to the Registrar that the application to continue and the proposed articles are approved—

(i) by a majority of the directors or the other persons who exercise the powers of the company; or

(ii) in the manner established by the company for exercising the company's powers; and

(d) evidence satisfactory to the Registrar that the company is not disqualified from continuing in Montserrat under section 202(2).

(2) Subject to subsection (3), the articles of a company continuing under this Act shall comply with section 7.

(3) The articles of a company applying to continue under this Act shall, in addition to the matters required to be provided for under section 7, provide for—

(a) the name of the company at the date of the application and the name under which it proposes to be continued;

(b) the jurisdiction under which the foreign company is incorporated, registered or formed; and

(c) the date on which the foreign company was incorporated, registered or formed.

(4) The articles of a foreign company applying to continue under this Act shall be signed by, or on behalf of, the person who approves the articles under subsection (1)*(c)*.

Continuation

204. (1) If the Registrar is satisfied that the requirements of this Act in respect of continuation are complied with, on receipt of the documents specified in section 203(1), the Registrar shall—

(a) register the documents;

(b) allot a unique number to the continued company; and

(c) issue a certificate of continuation to the continued company.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that—

(a) the requirements of this Act as to continuation have been complied with; and

(b) the foreign company is continued as a company incorporated under this Act under the name designated in its articles on the date specified in the certificate of continuation.

(3) The Registrar may refuse to continue a foreign company under this Part if he is of the opinion that it would be contrary to the public interest to do so.

Effect of continuation

205. (1) If a foreign company is continued under this Act—

(a) this Act applies to the continued company as if it had been incorporated under section 6 after the effective date;

(b) the continued company is capable of exercising the powers of a company incorporated under this Act;

(c) the continued company is not to be treated as a company incorporated under the laws of a jurisdiction outside Montserrat; and

(d) the articles filed under section 203(1) become the articles of the company.

(2) The continuation of a foreign company under this Act does not affect—

(a) the continuity of the continued company as a legal entity; or

(b) the assets, rights, obligations or liabilities of the continued company.

(3) Without limiting subsection (2)—

(a) a conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and a cause existing against the foreign company or against a member, director, officer or agent of the foreign company, is not released or impaired by its continuation as a company under this Act; and

(b) civil or criminal proceedings pending by or against a foreign company, or against a member, director, officer or agent of the foreign company, when the Registrar issues a certificate of continuation are not abated or discontinued by its continuation as a company under this Act, but the criminal or civil proceedings may be enforced, prosecuted, settled or compromised by or against the continued company or against a member, director, officer or agent of the company when it was a foreign company.

(4) The shares in the foreign company outstanding immediately before the Registrar issues a certificate of continuation are deemed to have been issued in conformity with this Act.

Continuation under foreign law

206. (1) Subject to its articles, a company for which the Registrar would issue a certificate of good standing under section 376 may, by a resolution of directors or members, continue as a company incorporated under the laws of a jurisdiction outside Montserrat in the manner provided under the laws of that jurisdiction.

(2) A company that continues as a company incorporated under the laws of jurisdiction outside Montserrat ceases to be a company incorporated under this Act only if the laws of the jurisdiction outside Montserrat permit the continuation and the company has complied with the laws of that jurisdiction.

(3) The registered agent of a company that continues as a company incorporated under the laws of a jurisdiction outside Montserrat may file a notice of the company's continuance in the approved form.

(4) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction are complied with, he shall—

(a) issue a certificate of discontinuance of the company;

(b) strike the company off the Register of Companies with effect from the date of the certificate of discontinuance; and

(c) publish the striking off of the company by notice in the *Gazette*.

(5) A certificate of discontinuance issued under subsection (4) is *prima facie* evidence that—

(a) the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction are complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.

(6) If a company is continued under the laws of a jurisdiction outside Montserrat—

(a) the company continues to be liable for its claims, debts, liabilities and obligations that existed before its continuation as a company under the laws of the jurisdiction outside Montserrat;

(b) a conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and a cause existing against the company or against any member, director, officer or agent of the company is not released or impaired by its continuation as a company under the laws of the jurisdiction outside Montserrat;

(c) civil or criminal proceedings pending by or against the company or against a member, director, officer or agent of the company are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Montserrat, but the criminal or civil proceedings may be enforced, prosecuted, settled or compromised by or against the company or against a member, director, officer or agent of the company as the case may be; and

(d) service of process may continue to be effected on the registered agent of the company in Montserrat in respect of a claim, debt, liability or obligation of the company during its existence as a company under this Act.

PART 11

MEMBERS' REMEDIES

Interpretation for this Part

207. In this Part, **"member"**, in relation to a company, means—

(a) a shareholder or a personal representative of a shareholder; or

(b) a guarantee member of a company limited by guarantee.

Restraining or compliance order

208. (1) If a company or a director of a company engages in, proposes to engage in or has engaged in, conduct that contravenes this Act or the articles of the company, the Court may, on the application of a member or a director

of the company, make an order directing the company or director to comply with this Act or the articles.

(2) If the Court makes an order under subsection (1), it may also grant consequential relief as it considers appropriate.

(3) The Court may, before the final determination of an application under subsection (1), make, as an interim order, an order that it could make as a final order under that subsection.

Derivative actions

209. (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to—

(a) bring proceedings in the name, and on behalf of, that company; or

(b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under subsection (1), the Court shall take the following matters into account—

(a) whether the member is acting in good faith;

(b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;

(c) whether the proceedings are likely to succeed;

(d) the costs of the proceedings in relation to the relief likely to be obtained; and

(e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that—

(a) the company does not intend to bring, diligently continue or defend or discontinue the proceedings; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to—

(i) the directors; or

(ii) to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders—

(a) the applicant must serve at least twenty-eight days' notice of an application for leave under subsection (1) on a company; and

(b) the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant interim relief as it considers appropriate, pending the determination of an application for leave under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company.

Costs of derivative action

210. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 209, it shall, on the application of the member, order that the reasonable costs of bringing or intervening in the proceedings be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear the costs of bringing or intervening in the proceedings.

(2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order—

(a) that the company bear the proportion of the costs as it considers to be reasonable; or

(b) that the company shall not bear any of the costs.

Powers of Court when leave granted under section 209

211. The Court may, at any time after granting a member leave under section 209, make an order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes including an order—

(a) authorising the member or another person to control the proceedings;

(b) giving directions for the conduct of the proceedings;

(c) that the company or its directors provide information or assistance in relation to the proceedings; and

(d) directing that an amount ordered to be paid by a defendant in the proceedings must be paid in whole or in part to a former and current member of the company instead of to the company.

Compromise, settlement or withdrawal of derivative action

212. Proceedings brought by a member or in which a member intervenes with the leave of the Court under section 209, may be settled, compromised or discontinued only with the approval of the Court.

Personal actions by members

213. A member of a company may bring an action against the company for breach of a duty owed by the company to that member.

Representative actions

214. If a member of a company brings proceedings against the company and another member has the same or substantially the same interest in the proceedings, the Court may—

(a) appoint that member to represent each member who has the same interest; and

(b) make an order it considers appropriate including an order—

(i) as to the control and conduct of the proceedings;

(ii) as to the costs of the proceedings; and

(iii) directing the distribution of an amount ordered to be paid by a defendant in the proceedings among the members represented.

Prejudiced members

215. (1) A member of a company who considers—

(a) that the affairs of the company have been, are being or are likely to be conducted in a manner that is; or

(b) an act of the company has been, is or is likely to be,

oppressive, unfairly discriminatory or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court considers that it is just and equitable to do so, the Court may make an order including an order—

(a) in the case of a shareholder, requiring the company or another person to acquire the shareholder's shares;

(b) requiring the company or another person to pay compensation to the member;

(c) regulating the future conduct of the company's affairs;

(d) amending the company's articles;

(e) appointing a receiver of the company;

(f) appointing a liquidator under Part 14 on the grounds specified in section 261;

(g) directing the rectification of the records of the company; or

(h) setting aside a decision made or action taken by the company or its directors in breach of this Act or the company's articles.

(3) The Court may make an order against a company or another person under this section only if the company or person is a party to the proceedings in which the application is made.

PART 12

FOREIGN COMPANIES

Meaning of "carrying on business"

216. (1) A reference in this Part to a foreign company carrying on business in Montserrat includes a reference to the foreign company establishing or having a place of business in Montserrat.

(2) For the purposes of this Part, a foreign company does not carry on business in Montserrat solely because in Montserrat, it—

(a) is, or becomes a party to legal proceedings or settles a legal proceeding, claim or dispute;

(b) holds a meeting of its directors or members or carries on another activity concerning its internal affairs;

(c) maintains a bank account;

(d) effects a sale of property through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Montserrat;

(f) creates evidence of a debt or creates a charge on property;

(g) secures or collects any of its debts or enforces its rights in regard to a security relating to its debts;

(h) conducts an isolated transaction that is completed within a period of thirty-one days not being one of a number of similar transactions that is repeated; or

(i) invests its funds or holds property.

Foreign company may carry on business only if registered

217. (1) A foreign company may carry on business in Montserrat only if the foreign company—

(a) is registered under this Part; or

(b) has applied to be registered and the application has not been determined.

(2) If a foreign company is registered under this Part under an alternate name, it shall carry on business in Montserrat using the alternate name under which it is registered in place of its corporate name.

(3) A foreign company that contravenes subsection (1) or (2), commits an offence and is liable on summary conviction to a fine of $25,000.

Application for registration

218. An application by a foreign company for registration under this Part shall be made to the Registrar in the approved form and shall be accompanied by—

(a) evidence of its incorporation;

(b) a certified copy of the instrument constituting or defining its constitution;

(c) a list of its shareholders or other members as at the date of the application specifying the full name, nationality, or place of incorporation in the case of a body corporate, and address of each shareholder or other member and the date that the person became a shareholder or other member;

(d) a list of its directors as at the date of the application specifying the full name, nationality, address and date of appointment of each director;

(e) a notice specifying the name of the person appointed as the registered agent of the foreign company in Montserrat, endorsed by the registered agent with his agreement to act as registered agent;

(f) if a document specified in paragraph *(a)* or *(b)* is not in English, a translation of the document certified as accurate in accordance with the Regulations; and

(g) any other document prescribed.

Registration

219. **(1)** Subject to subsection (2), if the Registrar receives an application under section 218, he shall—

(a) register the foreign company in the Register of Foreign Companies; and

(b) issue to the foreign company a certificate of registration as a foreign company.

(2) If the Registrar considers that a foreign company's corporate name is undesirable, the Registrar shall register the company under subsection (1) only if the foreign company applies to be registered under an alternate name that is acceptable to the Registrar.

Registration of changes in particulars

220. (1) A foreign company registered under this Part shall file a notice in the approved form within one month after a change in—

(a) its corporate name;

(b) the jurisdiction of its incorporation;

(c) the instrument constituting or defining its constitution;

(d) a director of the foreign company or the information filed in respect of a director;

(e) its registered agent; or

(f) any other particulars as may be prescribed.

(2) A notice of change of registered agent—

(a) shall be endorsed by the new registered agent with his agreement to act as registered agent; and

(b) takes effect when the Registrar registers the notice of change of registered agent.

(3) A notice of a change in the instrument constituting or defining the constitution of a foreign company shall be accompanied by—

(a) a certified copy of the new or amended instrument; and

(b) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.

(4) If the Registrar receives a notice of change under subsection (3) that complies with this section, he shall register the change in the Register of Foreign Companies.

(5) A foreign company that contravenes this section, commits an offence and is liable on summary conviction to a fine of $10,000.

Foreign company to have registered agent

221. (1) A foreign company that carries on business in Montserrat shall have a registered agent in Montserrat.

(2) A person may act as a foreign company's registered agent only if that person is a licensed company manager.

(3) A foreign company that contravenes subsection (1) and a person who contravenes subsection (2), commit an offence and are liable on summary conviction to a fine of $20,000.

Resignation of registered agent

222. **(1)** A person may resign as the registered agent of a foreign company only in accordance with this section.

(2) A person who wishes to resign as the registered agent of a foreign company shall—

(a) give a person specified in subsection (3), at least thirty days written notice of his intention to resign as registered agent of the foreign company on the date specified in the notice;

(b) give the foreign company a list of each approved registered agent in Montserrat including each registered agent's name and address; and

(c) file a copy of the notice and the list of registered agents under paragraph *(b)*.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to—

(a) the principal place of business of the foreign company in Montserrat, if any; and

(b) a director of the foreign company—

(i) at the director's last known address; or

(ii) if the registered agent does not know of a director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) If a foreign company does not appoint a new registered agent and file a notice of change of registered agent under section 220 on or before the date specified in a notice under subsection (2), the registered agent may file a notice of resignation as the foreign company's registered agent.

(5) Unless the foreign company has previously changed its registered agent, the resignation of a registered agent is effective the day after the Registrar registers the notice of resignation.

Registered agent ceases to be eligible to act

223. **(1)** For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to be a licensed company manager.

(2) If a person ceases to be eligible to act as a registered agent, that person shall, with respect to each foreign company of which he was, immediately before ceasing to be eligible to act, send to the person specified in subsection (3)—

(a) a notice—

(i) advising the foreign company that he is no longer eligible to be its registered agent;

(ii) advising the foreign company that it must appoint a new registered agent within sixty days of the date of the notice; and

(iii) specifying that on the expiration of the period specified in sub-paragraph (ii), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent; and

(b) a list of persons who are authorised by the Commission to provide registered agent services.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to—

(a) the principal place of business of the foreign company in Montserrat, if any; and

(b) a director of the foreign company at the director's last known address or, if the registered agent does not know of a director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) A foreign company which is sent a notice under subsection (2) shall, within sixty days of the date of the notice—

(a) appoint a new registered agent; and

(b) file a notice of change of registered agent under section 220.

(5) A person who has ceased to be eligible to act as a registered agent, ceases to be the registered agent of each company to which the person which sends a notice under subsection (2), on the earlier of—

(a) the date that the foreign company changes its registered agent in accordance with subsection (4); or

(b) the first day after the expiry of the notice period under subsection (4).

(6) A registered agent who fails to comply with subsection (2) and a foreign company that contravenes subsection (4), commit an offence and are liable on summary conviction to a fine of $10,000.

(7) A person does not commit an offence under subsection (6) if he—

(a) ceases to be eligible to act as a registered agent; and

(b) continues to be the registered agent of a company during the period from the date he ceases to be eligible to act, to the date that the company appoints a new registered agent.

Control over names of foreign companies

224. **(1)** If the Registrar is satisfied that the corporate, alternate or other name being used by a foreign company carrying on business in Montserrat is undesirable, he may serve a notice in the approved form on the foreign company requiring it to cease carrying on business in Montserrat using that name.

(2) A foreign company on which a notice is served under subsection (1) shall cease to carry on business in Montserrat using the name specified in the notice from—

(a) a date thirty days after the date of the service of the notice; or

(b) a later date specified in the notice.

(3) The Registrar may withdraw a notice served under subsection (1).

(4) If a notice under subsection (1)—

(a) relates to the corporate name of a foreign company; or

(b) if registered under an alternate name, relates to its alternate name,

the company shall, within thirty days after the date of service of the notice, apply to the Registrar to be registered under an alternate name that is acceptable to the Registrar.

(5) If the Registrar determines that the alternate name under which a foreign company is applying to be registered under subsection (4) is acceptable to him, the Registrar shall register the foreign company under the alternate name.

(6) A foreign company that contravenes subsection (2) or subsection (4), commits an offence and is liable on summary conviction to a fine of $15,000.

Use of name by foreign company

225. **(1)** Subject to subsections (2), (3) and (4), a foreign company that carries on business in Montserrat shall ensure that its full corporate name, or if it is registered under this Part under an alternate name, that alternate name and the name of the jurisdiction of its incorporation are clearly stated in—

(a) each communication sent by the foreign company or on its behalf; and

(b) each document issued or signed by the foreign company, or on its behalf,

that is evidence of, or creates a legal obligation of the foreign company.

(2) For the purposes of subsection (1), a recognised abbreviation of a word may be used in the name of a foreign company if it is not misleading to do so.

(3) If a foreign company is registered under this Part under an alternate name, the foreign company shall state in each communication and document specified in subsection (1)*(a)* and *(b)* that the alternate name under which it is registered is not the corporate name under which it is registered in the jurisdiction of its incorporation.

(4) The Regulations may provide for circumstances in which a company may or shall set out its full corporate name in a communication or document specified in subsection (1)*(a)* or *(b)* in addition to, or in place of, the alternate name under which it is registered.

(5) A foreign company that contravenes subsections (1) or (3), commits an offence and is liable on summary conviction to a fine of $15,000.

Foreign company ceasing to carry on business in Montserrat

226. (1) A foreign company shall, within seven days of ceasing to carry on business in Montserrat, file a notice in the approved form.

(2) On receipt of a notice under subsection (1), the Registrar shall remove the foreign company from the Register of Foreign Companies and from the time the foreign company is deleted from the Register of Foreign Companies, the person appointed as the registered agent of the foreign company ceases to be that foreign company's registered agent.

Removal of foreign company from Register

227. (1) The Registrar may remove a foreign company from the Register of Foreign Companies if—

(a) he has reasonable cause to believe that—

(i) the foreign company is not carrying on business in Montserrat;

(ii) the foreign company is carrying on business for which a licence, permit or authority is required under the laws of Montserrat without a licence, permit or authority; or

(iii) the foreign company no longer has status as a legal entity in the jurisdiction in which it is or was incorporated, registered or formed;

(b) the foreign company does not have a registered agent;

(c) the foreign company fails to—

(i) file any return, notice or document required to be filed under this Act; or

(ii) pay a fee or penalty payable under this Act by the due date; or

(d) he is of the opinion that the removal of the foreign company from the Register of Foreign Companies is in the public interest.

(2) Before the Registrar removes a foreign company from the Register of Foreign Companies on the grounds specified in subsection (1), he shall—

(a) send the company a notice stating that—

(i) he intends to remove the foreign company from the Register of Foreign Companies and specifying the ground under which he is doing so; and

(ii) unless the foreign company shows why the Registrar should not remove it from the Register of Foreign Companies, the foreign company will be removed from the Register of Foreign Companies on a date, at least thirty days after the date of the notice, specified in the notice, at least thirty days after the date of the notice; and

(b) publish a notice of his intention to remove the foreign company from the Register of Foreign Companies in the *Gazette*.

(3) After the expiration of the time specified in the notice, unless the foreign company has shown cause to the contrary, the Registrar may remove the foreign company from the Register of Foreign Companies.

(4) The Registrar shall publish a notice of the removal of a foreign company from the Register of Foreign Companies in the *Gazette*.

(5) A foreign company is removed from the Register of Foreign Companies and the foreign company ceases to be registered under this Part on the date specified in the notice sent to the company under subsection (2)*(a)*.

(6) The removal of a foreign company from the Register of Foreign Companies is not affected by the Registrar's failure to—

(a) serve a notice on the foreign company's registered agent; or

(b) publish a notice in the *Gazette* under subsection (2)*(b)*.

Subsequent registration of foreign company

228. (1) This section applies if—

(a) a foreign company is removed from the Register of Foreign Companies under section 226 or 227; and

(b) the foreign company subsequently applies under section 218 to be registered under this Part.

(2) The Registrar shall register a foreign company to which subsection (1) applies only if the foreign company pays the fees and penalties that were due to the Registrar at the date that the foreign company was removed from the Register of Foreign Companies.

(3) If a foreign company to which subsection (1) applies has, during the period between its removal from the Register of Foreign Companies and

its subsequent application to be registered under section 218, carried on business in Montserrat, it is entitled to be registered under section 219 only if it pays—

(a) the fees that would have been payable had it been registered during that period; and

(b) the penalties that would have been payable for the non–payment of those fees.

(4) The registration of a foreign company to which subsection (1) applies takes effect from the date of its registration, not the date of its removal from the Register of Foreign Companies.

Service of documents on a foreign company registered under this Part

229. (1) Subject to subsection (2), a document may be served on a foreign company registered under this Part by leaving the document at, or sending it by post to, the address of the registered agent of the foreign company.

(2) Subsection (1) does not affect or limit the power of the Court to authorise a document to be served on a foreign company registered under this Part in a different manner.

Financial statements and returns

230. A foreign company registered under this Part shall file such financial statements and financial and other returns as may be prescribed.

Validity of transactions not affected

231. A failure by a foreign company to comply with this Part does not affect the validity or enforceability of a transaction entered into by the foreign company.

PART 13

STRIKE-OFF AND DISSOLUTION

Interpretation for this Part

232. In this Part—

"liquidator" means a liquidator appointed under Part 14;

"Register" means the Register of Companies.

Striking company off Register

233. (1) The Registrar may strike the name of a company off the Register if—

(a) the company—

(i) does not have a registered agent;

(ii) fails to file a return, notice or document required to be filed, or provide information required under this Act;

(iii) fails to pay its annual fee or any other prescribed fee by the due date;

(iv) fails to pay a penalty due under this Act or the Regulations; or

(v) fails to provide PSC information or PSC verification evidence to the Registrar, as required by this Act; or

(b) the Registrar is satisfied that—

(i) the registered agent of the company is a person who is not eligible to act as the company's registered agent in accordance with section 79;

(ii) the company has ceased to carry on business; or

(iii) the company is carrying on business for which a licence, permit or authority is required under the laws of Montserrat without having a licence, permit or authority.

(2) If the Registrar determines that the company is trading, has property or that there is another reason why the company should not be struck off the Register, he may, instead of striking the company from the Register, refer the company to the Commission for investigation.

(3) Before striking a company off the Register on the grounds specified in subsection (1)*(a)* or *(b)*, the Registrar shall—

(a) send the company a notice stating that, unless the company shows cause to the contrary, it shall be struck off the Register on a date specified in the notice, which shall be no less than thirty days after the date of the notice; and

(b) publish a notice of his intention to strike the company off the Register in the *Gazette*.

(4) After the expiration of the time specified in the notice, unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(5) The Registrar shall publish a notice of the striking of a company from the Register in the *Gazette*.

(6) The striking of a company off the Register is effective from the date of the notice published in the *Gazette*.

(7) The striking off of a company shall not be affected by the Registrar's failure to—

(a) serve a notice on the registered agent; or

(b) publish a notice in the *Gazette* under subsection (3).

Appeal

234. (1) A person who is aggrieved by the striking off of a company under section 233 may, within ninety days of the date of the notice published in the *Gazette*, appeal to the Court.

(2) Notice of an appeal to the Court under subsection (1) shall be served by the aggrieved person on the Registrar, who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1), suspend the operation of the striking off on the terms he considers appropriate, pending the determination of the appeal.

Effect of striking off

235. (1) If a company is struck off the Register, the company and the directors, members and a liquidator or receiver of the company shall not—

(a) commence legal proceedings, carry on business or in any way deal with the assets of the company;

(b) defend legal proceedings, make a claim or claim a right for, or in the name of the company; or

(c) act with respect to the affairs of the company.

(2) Despite subsection (1), if a company is struck off the Register, the company, or a director, member, liquidator or receiver of the company may—

(a) apply to the Registrar for the restoration of the company to the Register;

(b) continue to defend proceedings that were commenced against the company before the date the company was struck off the Register; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company before the company was struck off the Register.

(3) The striking of a company from the Register does not—

(a) prevent—

(i) the company from incurring liabilities; or

(ii) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; and

(b) affect the liability of any of its members, directors, officers or agents.

Dissolution of company struck off the Register

236. If a company that is struck off the Register under section 233 remains struck off for seven years, it is dissolved with effect from the last day of that seven-year period.

Restoration of company to Register by Registrar

237. **(1)** If a company that is struck off the Register is not dissolved, the Registrar may—

(a) on receipt of an application in the approved form; and

(b) on payment of the restoration fee and any outstanding fees and penalties,

restore the company to the Register and issue a certificate of restoration to the Register.

(2) If a company is struck off the Register under section 233(1)*(a)*(i) or the struck off company does not have a registered agent, the Registrar may restore the company to the Register only if he is satisfied that—

(a) a licensed person has agreed to act as registered agent of the company; and

(b) it is fair and reasonable for the name of the company to be restored to the Register.

(3) An application to restore a company to the Register under subsection (1) may be made by—

(a) the company; or

(b) a creditor, member or liquidator of the company.

(4) A company, or a creditor, member or liquidator of a company may, appeal to the Court from a refusal of the Registrar to restore the company to the Register within ninety days of the Registrar's refusal to restore the company to the Register.

(5) If the Court is satisfied that it would be just for the company to be restored to the register, the Court may direct the Registrar to restore the company to the Register on the terms and conditions it considers appropriate.

(6) Notice of an appeal under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(7) A company that is restored to the Register under this section is deemed never to have been struck off the Register.

(8) If a company to which subsection (2) applies is restored to the Register, the company shall immediately appoint a registered agent in accordance with section 81.

Application to restore dissolved company to the Register

238. (1) An application may be made to the Court to restore a dissolved company to the Register by—

(a) a creditor, former director, former member or former liquidator of the company; or

(b) a person who can establish an interest in having the company restored to the Register.

(2) An application under subsection (1) may not be made more than ten years after the date that the company was dissolved.

(3) A person who makes an application under subsection (1) must serve a notice of the application on—

(a) the Registrar;

(b) the Financial Secretary; and

(c) if the company was a financial institution before its dissolution, the Commission,

and each party is entitled to appear and be heard on the hearing of the application.

Court's powers on hearing

239. (1) Subject to subsection (2), on an application under section 238, the Court may—

(a) restore the company to the Register subject to any condition it considers appropriate; and

(b) give a direction or make an order it considers necessary or desirable to place the company and any other person as nearly as possible to the position that the company or other person would have been in if the company had not been dissolved or struck off the Register.

(2) If the company was dissolved following the completion or termination of its liquidation under Part 14, the Court shall restore the company to the Register only if—

(a) the applicant nominates a person to be liquidator of the company if it is restored to the Register;

(b) the person nominated as liquidator may be appointed liquidator under Part 14 and consents to act as liquidator of the company on its restoration; and

(c) provision satisfactory to the Court has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) If the Court makes an order to restore a company to the Register under subsection (2), it shall appoint as liquidator of the company—

(a) the person the applicant nominates; or

(b) a person who is able to act as liquidator of the company.

Effect of restoration

240. (1) If the Court makes an order restoring a company to the Register, a sealed copy of the Order shall be filed with the Registrar—

(a) in the case of a company to which section 238(2) applies, by the person appointed to be liquidator of the company under section 239(3); and

(b) in any other case, by the applicant for the Order.

(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register with effect from the date that the copy of the sealed order was filed.

(3) If the company was dissolved following the completion or termination of its liquidation under Part 14—

(a) the company is restored as a company in liquidation under Part 14; and

(b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the date that the company is restored to the Register.

(4) Subject to subsection (5), a company is restored to the Register with the name that it had immediately before it was dissolved.

(5) If the name of a company has been re-used in accordance with Regulations made under section 19, the company is restored to the Register with a name constituting its company number followed by the word "Limited".

(6) A company that is restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

Appointment of Official Receiver as liquidator of company struck off

241. (1) If a company is struck off the Register, the Registrar may apply to the Court for the appointment of the Official Receiver or some other person as liquidator of the company.

(2) If the Court makes an order under subsection (1)—

(a) the company is restored to the Register; and

(b) the liquidator is deemed to have been appointed by the Court under section 272.

Property of dissolved company

242. (1) Subject to subsection (2), the property of a company that has not been disposed of at the date the company is dissolved vests in the Crown.

(2) When a company is restored to the Register, any property, other than money, that was vested in the Crown under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

(3) A company restored to the Register is entitled to be paid out of the Consolidated Fund—

(a) any money received by the Crown under subsection (1) in respect of the company; and

(b) if property, other than money, vested in the Crown under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—

(i) the value of the property at the date it vested in the Crown; and

(ii) the amount realised by the Crown by the disposition of that property.

Disclaimer

243. (1) In this section, **"onerous property"** means—

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Financial Secretary may, by notice published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 242.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Financial Secretary on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Financial Secretary, orders otherwise, the Financial Secretary may disclaim property only if the property is disclaimed—

(a) within twelve months of the date upon which the vesting of the property under section 242 came to the notice of the Financial Secretary; or

(b) if any person interested in the property gives notice in writing to the Financial Secretary requiring him to decide whether to

disclaim the property, within three months of the date that he received the notice,

whichever is first.

(5) Property disclaimed by the Financial Secretary under this section is deemed not to have vested in the Crown under section 242.

(6) A disclaimer under this section—

(a) operates so as to determine, with effect from immediately before the dissolution of the company, the rights, interests and liabilities of the company in, or in respect of, the property disclaimed; and

(b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.

(7) A person who suffers loss or damage as a result of a disclaimer under this section—

(a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of an order of the Court under subsection (8); and

(b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may make an order under subsection (7)*(b)*, if the Court is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

PART 14

LIQUIDATION

Division 1

Preliminary

Interpretation for this Part

244. (1) In this Part—

"creditor", in relation to a company, means a person who has a claim against the company, whether assignment or otherwise, that is or would be a provable debt in the liquidation of the company;

"insolvent" has the meaning specified in section 245;

"liability" has the meaning specified in section 246;

"liquidator" means a person appointed as liquidator under this Part;

"preferential creditor" has the meaning specified in section 2(8);

"preferential debt" means a debt of a type prescribed by the Regulations as preferential;

"prescribed priority" means the priority for the payment of the costs and expenses of a liquidation prescribed by the Regulations;

"provable debt" has the meaning specified in section 247;

"relevant period" means the period of two years before—

(a) in the case of a company in liquidation, the date of the appointment of the liquidator;

(b) if a provisional liquidator has been appointed, the date of appointment;

"relevant person" means a person who is, or within the relevant period has been—

(a) a director or other officer of the company;

(b) employed by the company under a contract of services or a contract for services and who, in the opinion of the liquidator or the Official Receiver, is capable of providing the information required;

(c) a director or other officer of a company which is a director of the company;

(d) employed under a contract of services or a contract for services employee by a company which is a director of the company; or

(e) a person who, within the relevant period, has promoted the formation of the company;

"relevant time", in relation to a company, means the commencement of the liquidation of the company;

"secured creditor", in relation to a company, means a creditor of the company who holds a security interest over an asset of the company in respect of a liability of the company to the creditor;

"statutory demand" means a demand made under section 254; and

"unsecured creditor", in relation to a company, means a creditor of the company who is not a secured creditor.

Meaning of "insolvent"

245. A company—

(a) is presumed to be insolvent if—

(i) it fails to comply with the requirements of a statutory demand that has not been set aside under section 256; or

(ii) execution or other process issued on a judgment, decree or order of a Montserrat court in favour of a creditor of the company is returned wholly or partly unsatisfied; and

(b) is insolvent if—

(i) it is unable to pay its debts as they fall due; or

(ii) the value of its liabilities exceeds its assets.

Meaning of "liability"

246. (1) Subject to subsection (3), **"liability"** means a liability to pay money or money's worth, including a liability under an enactment, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution.

(2) A liability may be present or prospective, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Part, an illegal or unenforceable liability is deemed not to be a liability.

Meaning of "provable debt"

247. (1) Subject to section 248, the following liabilities are provable debts in the liquidation of a company—

(a) any liability to which the company is subject at the relevant time;

(b) any liability to which the company may become subject after the relevant time by reason of any obligation incurred before that time; and

(c) any interest that may be claimed in accordance with this Act or the Regulations.

(2) A liability in tort is a provable debt in the liquidation of a company if—

(a) the cause of action has accrued at the relevant time; or

(b) all the elements necessary to establish the cause of action exist at the relevant time, except for actionable damage.

Liabilities that are not provable debts or postponed debts

248. (1) The following liabilities are not provable debts—

(a) an obligation arising under a confiscation order made under section 7(3) of the Proceeds of Crime Act;

(b) a liability that, under this Act or any other enactment or a rule of law, is of a type that is not provable, whether on grounds of public policy or otherwise; and

(c) such other liabilities as may be prescribed.

(2) The following liabilities are postponed debts—

(a) any fine imposed for an offence;

(b) a liability that, under this Act, any other enactment or a rule of law is of a type that is required to be postponed; and

(c) such other liabilities as may be prescribed as postponed debts.

(3) A liability which is a postponed debt is not a provable debt until all other provable debts have been paid in full.

Insolvency set-off

249. (1) This section applies if, before the commencement of the liquidation, there have been mutual credits, mutual debts or other mutual dealings between a company in liquidation and a creditor claiming or intending to claim for a debt in the liquidation.

(2) Subject to section 250 and subsections (3) to (6)—

(a) if this section applies, an account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sum due from one party shall be set-off against the sums due from the other party; and

(b) only the balance, if any, of the account owed—

(i) to the creditor may be claimed in the liquidation; or

(ii) to the company shall be paid to the liquidator as part of the assets of the company.

(3) If all or part of the balance referred to in subsection (2)*(b)*(ii) as owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, is payable if and when the debt becomes due and payable.

(4) A sum shall be regarded as being due to or from the company for the purposes of subsection (2) if it constitutes a liability within the meaning of section 246.

(5) Sections 252 and 253 apply, as appropriate, for the purposes of this section to—

(a) any obligation to or from the debtor which, because it is a contingency or for any other reason, it does not bear a certain value; or

(b) any sums due to the debtor which—

(i) are of a periodical nature;

(ii) bear interest; or

(iii) are payable in a currency other than dollars.

(6) The provisions of the Regulations concerning debts payable at a future time apply for the purposes of this section to any sum due to or from the debtor which is payable in the future.

(7) The Regulations may provide for the treatment of netting agreements in the liquidation of a company.

Exclusions from section 249

250. (1) Section 249 does not apply to—

(a) any debt arising out of an obligation incurred at a time when, in the case of a company, the creditor had notice that—

(i) an application to the Court for the appointment of a liquidator was pending; or

(ii) a meeting of the members had been called to consider the appointment of a liquidator under section 249; or

(b) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party if that agreement was entered into—

(i) after the commencement of the liquidation;

(ii) at a time when the creditor had notice of a matter specified in subsection (1)*(a)*(i) or (ii);

(2) If, before the relevant time, a creditor waives or agrees not to claim the benefit of a set-off under section 249, that waiver or agreement takes effect despite that section, except to the extent that a creditor who was not a party to the agreement, or has not agreed otherwise, is prejudiced.

Validity of agreements to subordinate debt

251. If, before the relevant time, a creditor acknowledges or agrees that, in the event of a shortfall of assets, the creditor will accept a lower priority in respect of a debt than that which the creditor would otherwise have under this Act, that acknowledgement or agreement takes effect despite the provisions of this Act, except to the extent that a creditor of the company in liquidation who was not a party to the agreement is prejudiced.

Quantification of claims

252. (1) The amount of a claim shall be quantified as at the relevant time.

(2) If a claim is subject to a contingency or, for any other reason, the amount of the claim is not certain, the liquidator shall—

(a) agree an estimate of the value of the claim as at the relevant time; or

(b) apply to the Court to determine the amount of the claim.

(3) On an application by the liquidator under subsection (2)*(b)*, the Court may—

(a) determine the amount of the claim itself; or

(b) determine a method to be used by the liquidator for calculating the amount of the claim.

(4) In the case of rent and other payments of a periodic nature, a claim may include any amounts due and unpaid at the relevant time and if, at the relevant time, a payment was accruing due, the claim may include so much as would have fallen due at that time if the liability had been accruing from day to day.

(5) A claim based on a liability that, at the relevant time, was not payable by the company until after the relevant time shall be discounted in accordance with the Regulations.

(6) Interest may be included in a claim as provided by section 253.

Interest on claims

253. (1) Subject to section 316, a claim in the liquidation of a company shall not include an amount for interest in respect of a period after the commencement of the liquidation.

(2) If it was agreed between the company and a creditor that the debt on which the creditor's claim is based would bear interest, the claim may include interest, at the agreed rate, up to the commencement of the liquidation.

(3) A claim made by a creditor other than one referred to in subsection (2) may include interest up to the commencement of the liquidation if—

(a) the debt on which the claim is based is due by virtue of a written instrument and was payable at a certain time before the relevant time; or

(b) before the commencement of the liquidation, the creditor made written demand on the company and the demand stipulated that interest would be payable on the debt from the date of the demand until payment of the debt.

(4) The amount of interest that may be included in a claim under this section is—

(a) in the case of a debt referred to in subsection (3)*(a)*, interest at the judgment rate for the period from the date that the debt was payable to the relevant time; and

(b) in the case of a debt referred to in subsection (3)*(b)*, interest at the judgment rate for the period from the date of the written demand to the relevant time.

Division 2

Statutory Demand

Service of statutory demand

254. **(1)** A creditor may serve a demand on a company for payment of a debt owed by that company to him.

(2) A statutory demand shall—

(a) be in respect of a debt that is due at the time of the demand, the amount of which is not less than the prescribed minimum;

(b) be in writing and shall specify the nature of the debt and its amount;

(c) be dated and shall be signed by the creditor or by a person authorised to make demand on the creditor's behalf;

(d) require the company to pay the debt or to secure or compound for the debt to the reasonable satisfaction of the creditor within twenty-one days of the date of service of the demand on it;

(e) state that if the demand is not complied with, application may be made to the Court for the appointment of a liquidator;

(f) set out the rights of the company to make application to set the demand aside under section 255; and

(g) comply with, and be served in accordance with, the Regulations.

(3) If the creditor making demand under subsection (1) is a secured creditor in respect of the debt, the full amount of the debt shall be specified in the demand, but—

(a) the demand shall specify the nature of the security interest, and the value which the creditor places on it at the date of the demand; and

(b) the amount claimed—

(i) shall be the full amount of the debt less the amount specified as the value of the security interest; and

(ii) must equal or exceed the prescribed minimum.

Application to set aside statutory demand

255. **(1)** If a company has been served with a statutory demand it may apply to the Court for an order setting it aside.

(2) An application under subsection (1) shall be made within twenty-one days of the date of service of the demand on the company.

(3) The Court shall not extend the time for making an application to set aside a statutory demand.

(4) A company applying to set aside a statutory demand under this section shall give seven days' notice of the hearing to the creditor or, if a person is named in the demand as the person with whom communications in respect of the demand should be made, to that person.

(5) If a company makes an application under this section, the time for compliance with the requirements of the statutory demand is extended until—

(a) the date on which the application is determined; or

(b) such later date as the Court may fix under section 256(5).

Hearing to set aside statutory demand

256. (1) The Court shall set aside a statutory demand if it is satisfied that—

(a) there is a substantial dispute as to whether—

(i) the debt; or

(ii) a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum,

is owing or due;

(b) the company on whom the statutory demand was served has a reasonable prospect of establishing a set-off, counterclaim or cross claim in an amount equal to, or greater than, the amount specified in the demand less the prescribed minimum; or

(c) the creditor holds a security interest in respect of the debt claimed and the value of the security interest is equal to, or greater than, the amount specified in the demand less the prescribed minimum.

(2) If the Court is satisfied that the amount of the creditor's debt is less than the amount specified in the statutory demand, but it equals or exceeds the prescribed minimum, it may make an order—

(a) varying the demand to show the amended debt; and

(b) declaring the demand to have had effect, as varied, as from the date of service of the demand.

(3) If the Court is satisfied that the security interest of a secured creditor has been under-valued in the statutory demand, the Court may require the creditor to amend the demand accordingly, but without prejudice to his right to make application for the appointment of a liquidator.

(4) The Court may set aside a statutory demand if it is satisfied that substantial injustice would otherwise be caused—

(a) because of a defect in the demand, including a failure to comply with section 254(3); or

(b) for some other reason.

(5) If, on hearing an application to set aside a statutory demand, the Court is satisfied that there are no grounds for setting aside the statutory demand, the Court shall dismiss the application but may extend the time for compliance with the statutory demand.

(6) Having considered the evidence before it on a hearing under this section, the Court may either summarily determine the application or adjourn it giving such directions as it considers appropriate.

Division 3

Appointment of Liquidator and Liquidation of Company

Commencement and duration of liquidation

257. (1) A company is put into liquidation by the appointment of a liquidator.

(2) A liquidator may be appointed in respect of a company only by—

(a) the members of the company under section 258; or

(b) the Court under section 272.

(3) The liquidation of a company commences at the time at which the liquidator is appointed and continues until it terminates in accordance with section 335.

Members' resolution

258. (1) Subject to section 259, the members of a company may, by special resolution, appoint an eligible insolvency practitioner as liquidator of the company.

(2) The Official Receiver may be appointed as liquidator of a company if a special resolution has been passed by reason of the Official Receiver exercising votes attached to shares in the company of—

(a) another company or an unregistered company of which the Official Receiver is liquidator; or

(b) a bankrupt of which the Official Receiver is bankruptcy trustee.

Restrictions on appointment of liquidator by members

259. (1) The members of a company may not appoint a liquidator of the company if—

(a) an application to the Court to appoint a liquidator has been filed and served but not yet determined;

(b) a liquidator has been appointed by the Court; or

(c) the person to be appointed liquidator has not consented in writing to his appointment.

(2) The members of a company that is a financial institution may not appoint a liquidator of the company unless at least five business days' written notice of the resolution, or such shorter period as the Commission may accept in writing, has been given to the Commission.

(3) Subject to section 258(2), the members of a company may not appoint the Official Receiver as liquidator of the company.

(4) Any resolution of the members that purports to appoint a liquidator contrary to this section is void and of no effect.

(5) The acts of a liquidator appointed in breach of subsection (1)*(a)* are valid provided that he is not aware of the breach and the acts are carried out in good faith.

Notice to liquidator

260. (1) If the members appoint a liquidator under section 258, the company shall, as soon as practicable, give the liquidator notice of his appointment.

(2) A company that contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of $10,000.

Appointment of liquidator by the Court

Grounds for appointment of liquidator of company

261. (1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of a company if—

(a) the company is insolvent;

(b) the number of members is reduced below the minimum number required under the Companies Act;

(c) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(d) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(d)*—

(a) the **"public"** includes the public within and outside Montserrat; and

(b) the preservation of the reputation of Montserrat is a matter of public interest.

(3) The Court may not appoint a liquidator of a company that is in liquidation, whether by virtue of the appointment of a liquidator—

(a) by the Court; or

(b) by a valid resolution of the members under section 258.

Applicants for order appointing liquidator of company

262. (1) Subject to this section, any one or more of the following may apply to the Court for the appointment of a liquidator of a company—

(a) the company;

(b) a creditor;

(c) a member;

(d) the directors;

(e) a director;

(f) the Attorney General under section 264; or

(g) the Commission under section 265;

(2) An applicant may, in an application under this section, propose an eligible insolvency practitioner as liquidator of the company.

Restrictions on applications

263. (1) An application for the appointment of a liquidator may be made by a director only on the ground that the company is insolvent.

(2) The leave of the Court is required for an application by—

(a) a director; or

(b) if the ground for the application is the company's insolvency, a member,

and the Court shall not grant leave unless the Court is satisfied that there is a *prima facie* case that the company is insolvent.

(3) An application to appoint a liquidator on the public interest ground may only be made by the Attorney General under section 264 or the Commission under section 265.

Application by the Attorney General

264. The Attorney General may apply to the Court for the appointment of a liquidator of a company on the public interest ground.

Application by Commission

265. The Commission may make application to appoint a liquidator of a company only—

(a) if the company—

(i) is, or at any time, has been a financial institution; or

(ii) is carrying on, or at any time has carried on, unauthorised financial services business; and

(b) on the grounds that the company is insolvent or that it is in the public interest for a liquidator to be appointed.

Withdrawal of application

266. An application for the appointment of a liquidator may not be withdrawn except with the leave of the Court.

Advertisement of application

267. (1) Unless the Court otherwise orders, an application for the appointment of a liquidator shall be advertised in accordance with the Regulations—

(a) if the company is the applicant, not less than seven days before the date set for the application to be heard; or

(b) if the company is not the applicant, not less than seven days after service of the application on the company and not less than seven days before the date set for the application to be heard.

(2) If the application is not advertised in accordance with this section and the Regulations, the Court may dismiss it.

Substitution of applicant

268. The Court may, by order, substitute as applicant in an application for the appointment of a liquidator, a creditor or member who is entitled to make such an application if—

(a) the applicant applies to withdraw the application or consents to it being dismissed;

(b) the Court considers that the application is not being diligently proceeded with;

(c) the applicant is not entitled to make the application; or

(d) the Court for any other reason considers it appropriate to do so.

Period within which application shall be determined

269. (1) Subject to subsection (2), an application for the appointment of a liquidator shall be determined within six months after it is filed.

(2) The Court may, upon such conditions as it considers appropriate, extend the period referred to in subsection (1) for one or more periods not exceeding three months each if—

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

(4) Section 381(1) does not apply to the time periods specified in this section.

Restrictions on company's opposition to application

270. (1) Insofar as an application for the appointment of a liquidator on the grounds that it is insolvent relies on a failure by the company to comply with a statutory demand, the company may not, without the leave of the Court, oppose the application on a ground—

(a) that the company relied on for the purposes of an application by it for the demand to be set aside; or

(b) that the company could have so relied on, but did not so rely on (whether it made such an application or not).

(2) The Court shall not grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the company is solvent.

Power to stay or restrain proceedings

271. If an application for the appointment of a liquidator or provisional liquidator of a company has been made but not yet determined or withdrawn, the applicant or any person who is entitled to apply for the appointment of a liquidator of the company under section 261 or under any other enactment may, if any action or proceeding is pending against the company in court or tribunal, apply to the Court, for a stay of the action or proceeding.

Court's powers on hearing application

272. (1) On the hearing of an application for the appointment of a liquidator, the Court may—

(a) appoint a liquidator of the company on one or more of the grounds specified in section 261;

(b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers appropriate.

(2) The Court shall not refuse to appoint a liquidator of a company merely because—

(a) the assets of the company are subject to a security interest in respect of an amount equal to or greater than the value or amount of the assets;

(b) the company has no assets; or

(c) if the applicant is a member and, if the order were made, no assets of the company would be available for distribution among the members.

(3) Subject to subsection (4), if an application to appoint a liquidator is made by a member on the just and equitable ground, the Court shall appoint a liquidator if it is of the opinion that—

(a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and

(b) in the absence of any other remedy it would be just and equitable to appoint a liquidator.

(4) Subsection (3) does not apply if the Court is of the opinion that—

(a) some other remedy is available to the applicant; and

(b) the applicant is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy.

Provisional Liquidator

Application for appointment of provisional liquidator

273. (1) If an application to the Court for the appointment of a liquidator of a company has been made but not determined or withdrawn, application may be made to the Court for the appointment of a provisional liquidator by—

(a) the applicant for the appointment of a liquidator; or

(b) any person who is entitled to apply for the appointment of a liquidator of the company under section 261 or under any other enactment.

(2) An application under subsection (1) by a member or a director may only be made with the leave of the Court.

(3) On an application under subsection (1), the Court may appoint the Official Receiver or an eligible insolvency practitioner as provisional liquidator of the company if—

(a) the company, in respect of which the application to appoint a liquidator has been made, consents; or

(b) the Court is satisfied that the appointment of a provisional liquidator is—

(i) necessary for the purpose of maintaining the value of assets owned or managed by the company;

(ii) otherwise in the interests of creditors, or any class of creditors; or

(iii) in the public interest.

(4) The Court may appoint a provisional liquidator on such terms as it considers appropriate and may, as a condition precedent to the appointment, require the applicant to deposit at Court, or otherwise secure to the satisfaction of the Court, such sum as the Court considers reasonable to cover the remuneration and expenses of the provisional liquidator.

Rights and powers of provisional liquidator

274. (1) Subject to subsection (2), a provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which he was appointed.

(2) The Court may—

(a) limit the powers of a provisional liquidator in such manner and at such times as it considers appropriate; or

(b) give such directions to the provisional liquidator as it considers appropriate.

Remuneration of provisional liquidator

275. (1) The provisional liquidator of a company is entitled to be paid such remuneration as the Court may order applying the general principles specified in the Regulations and to be reimbursed for the expenses that he has properly incurred.

(2) Subject to subsections (4) and (5), the remuneration and expenses of the provisional liquidator is payable—

(a) if a liquidator is not appointed, out of the assets of the company; or

(b) if a liquidator is appointed, as an expense of the liquidation in accordance with the prescribed priority.

(3) The Court may order the applicant for the appointment of the provisional liquidator to pay or contribute to the remuneration and expenses of the provisional liquidator if it is satisfied that the applicant—

(a) misled the Court when making the application; or

(b) acted unreasonably in applying for the appointment of the provisional liquidator.

(4) If the assets of the company are not sufficient to pay the remuneration and expenses of the provisional liquidator, the Court may order

the shortfall, or part of the shortfall, to be paid by the applicant for the appointment of the provisional liquidator.

(5) Unless the Court otherwise orders, if a liquidator of the company is not appointed, the provisional liquidator may retain out of the company's assets such sums or assets as are, or may be, required for meeting his remuneration and expenses.

Termination of appointment of provisional liquidator

276. (1) The Court may, on the application of the provisional liquidator or of any person specified in section 263(1) or on its own motion, terminate the appointment of a provisional liquidator.

(2) If the Court has not previously terminated the appointment of a provisional liquidator under subsection (1), it terminates on—

(a) the determination by the Court of the application to appoint a liquidator; or

(b) the Court granting the applicant leave to withdraw the application under section 266.

(3) On the termination of the appointment of a provisional liquidator, the Court may give such directions or make such order with respect to the accounts of his administration, or to any other matters, as it considers appropriate.

Consequences of Appointment of Liquidator

Effect of liquidation

277. (1) Subject to subsection (2), with effect from the commencement of the liquidation of a company—

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part or authorised by the liquidator;

(c) unless the Court otherwise orders—

(i) no person may commence or proceed with any action or legal proceeding against the company or in relation to its assets;

(ii) no person may exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the company; and

(iii) no share in the company may be transferred;

(d) no alteration may be made in the status of or to the rights or liabilities of a member, whether by an amendment of the memorandum or articles or otherwise;

(e) no member may exercise any power under the memorandum or articles, or otherwise, except for the purposes of this Act; and

(f) no amendment may be made to the memorandum or articles of the company.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

Restrictions on enforcement process already commenced

278. (1) Subject to subsections (2) and (3), a creditor is not entitled to retain the benefit of any execution process, sequestration, distress or attachment over or against the assets of a company in liquidation unless the execution, process or attachment is completed before—

(a) if the liquidator was appointed by the members under section 258, the earlier of—

(i) the date on which the creditor had notice of the calling of the meeting at which the resolution for the appointment of a liquidator was proposed; or

(ii) the date on which the liquidator was appointed; or

(b) if the liquidator was appointed by Court the date on which the application to appoint the liquidator was made.

(2) A person who, in good faith and for value, purchases assets of a company—

(a) from an officer charged with an execution process; or

(b) on which distress has been levied,

acquires a good title to the assets as against the liquidator of the company.

(3) The Court may set aside the application of subsection (1) to the extent and subject to such terms as it considers appropriate.

(4) For the purposes of this section—

(a) an execution or distraint against personal property is completed by seizure and sale;

(b) an attachment of a debt is completed by the receipt of the debt; and

(c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

Duties of officer in execution process

279. (1) Subject to subsection (6), if—

(a) assets of a company are taken in an execution process; and

(b) before completion of the execution process the officer charged with the execution process receives notice that a liquidator or a provisional liquidator of a company has been appointed,

he shall, on being required by the liquidator or provisional liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the liquidator or provisional liquidator.

(2) The costs of the execution process are a first charge on any asset delivered or transferred to the liquidator under subsection (1) and the liquidator or provisional liquidator may sell all or some of the assets to satisfy that charge.

(3) Subject to subsection (6), if, in an execution process in respect of a judgment for a sum exceeding $500, assets of a company are sold or money is paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of fourteen days.

(4) If—

(a) within the period of fourteen days referred to in subsection (3), the officer has notice that—

(i) a meeting of the members of the company has been called at which a special resolution to appoint a liquidator is to be proposed; or

(ii) an application for the appointment of a liquidator of the company has been made to the Court; and

(b) a liquidator is appointed in respect of the company,

the officer shall deduct the costs of execution from the amount that he has retained under subsection (3) and pay the balance to the liquidator.

(5) A liquidator to whom money has been paid under subsection (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the rights conferred on a liquidator under this section to the extent and subject to such terms as it considers appropriate.

Notice of Appointment and Initial Meeting of Creditors

Notice of appointment

280. The liquidator of a company shall, within fourteen days of the date of his appointment—

(a) advertise his appointment in accordance with the Regulations;

(b) file notice of his appointment with the Registrar;

(c) serve notice of his appointment on the company in respect of which he was appointed; and

(d) if he has been appointed in respect of a company that is or at any time has been a financial institution, serve notice of his appointment on the Commission.

Liquidator to call first meeting of creditors

281. (1) Subject to section 285, the liquidator of a company shall call a meeting of the creditors of the company (the first creditors' meeting) to be held within twenty-one days of the date of his appointment—

(a) by sending a notice of the meeting to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting in accordance with the Regulations.

(2) During the period before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with—

(a) a list of the creditors of the company known to the liquidator; and

(b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors' meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.

(4) At the first creditors' meeting, the creditors may—

(a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or

(b) in the case of a liquidator appointed by the Court, resolve to make application to the Court for the appointment of another liquidator in his place; and

(c) in either case, appoint a creditors' committee.

Application to Court by members

282. If at a meeting held in accordance with section 281 the creditors appoint a liquidator in the place of the liquidator appointed by the members, a director, member or creditor of the company may apply to the Court for an order that—

(a) the person appointed by the members is appointed liquidator; or

(b) some other eligible insolvency practitioner is appointed as liquidator,

in either case, instead of or jointly with the liquidator appointed by the creditors.

Application of sections 281 and 282

283. (1) Subject to subsection (2), sections 281 and 282 do not apply to a liquidator appointed to act—

(a) jointly with an existing liquidator; or

(b) in place of a liquidator who has died or otherwise ceased to act.

(2) If the first liquidator of a company dies or ceases to act before sections 281 and 282 have been fully complied with, those sections apply to his successor and any continuing liquidator until the sections have been fully complied with.

Restrictions on powers of liquidator appointed by members

284. Despite section 288, in the case of a liquidator appointed by the members of a company, during the period before the holding of the first creditors' meeting called under section 281, the powers of the liquidator are limited to—

(a) taking into his custody and control all the assets to which the company is or appears to be entitled;

(b) disposing of perishable goods and other assets the value of which is likely to diminish if they are not immediately disposed of;

(c) doing all such things as may be necessary to protect the company's assets; and

(d) exercising such other of the powers conferred on a liquidator by section 288 as the Court may, on his application, sanction.

Court appointed liquidator may dispense with creditors' meeting

285. A liquidator appointed by the Court is not required to call a meeting of creditors under section 281 if—

(a) he considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;

(b) he gives notice to the creditors stating—

(i) that he does not consider it necessary for a meeting to be held;

(ii) the reasons for his view; and

(iii) that a meeting will not be called unless 10% in value of the creditors give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called; and

(c) no notice requiring a meeting to be held is received by him.

Liquidators

Status of liquidator

286. (1) In performing his functions and undertaking his duties under this Act, a liquidator, whether appointed by resolution of the members or by the Court, acts as an officer of the Court.

(2) A liquidator is the agent of the company in liquidation.

General duties of liquidator

287. (1) The principal duties of a liquidator of a company are—

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Act; and

(c) if there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Act.

(2) The liquidator shall, subject to this Act and the Regulations, use his own discretion in undertaking his duties.

(3) If it appears to the liquidator that the company has carried on unlicensed financial services business, he shall as soon as reasonably practicable, report the matter to the Commission.

(4) If the liquidator makes a report to the Commission under subsection (3), he shall—

(a) send to the Commission a copy of every notice or other document that he is required under this Part to send to a creditor or the Court; and

(b) notify the Commission of any application made to the Court in, or in connection with, the liquidation.

(5) A liquidator also has the other duties imposed by this Act and the Regulations and such duties as may be imposed by the Court.

General powers of liquidator

288. (1) A liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator under this Act and the powers conferred on him by this Act.

(2) Without limiting subsection (1), a liquidator has the powers specified in Schedule 1.

(3) The Court may provide that certain powers may only be exercised with the sanction of the Court—

(a) if the liquidator is appointed by the Court, on his appointment or subsequently; or

(b) if the liquidator is appointed by the members, at any time.

(4) If a liquidator disposes of any assets of the company to a person connected with the company, he shall notify the creditors' committee, if any, of such disposition.

(5) The liquidator of a company, whether or not appointed by the Court, may at any time apply to the Court for directions in relation to a particular matter arising in the liquidation.

(6) The acts of a liquidator of a company are valid, despite any defect in his nomination, appointment or qualifications.

Removal of liquidator

289. (1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if—

(a) the liquidator—

(i) is not eligible to act as an insolvency practitioner in relation to the company;

(ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Regulations or any Regulations made under this Act or, in his capacity as liquidator, under any other enactment or law in Montserrat; or

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that—

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the liquidator has an interest that conflicts with his role as liquidator; or

(iii) that for some other reason he should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by—

(a) the creditors' committee;

(b) a creditor of the company or, with the leave of the Court, a member of the company; or

(c) the Official Receiver.

(3) If the Court removes a liquidator from office under this section—

(a) if, following his removal, there is at least one liquidator remaining in office, the Court may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator removed was the sole liquidator of the company, the Court shall appoint the Official Receiver or an eligible insolvency practitioner as liquidator in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers appropriate.

Resignation of liquidator

290. (1) A liquidator of a company—

(a) shall resign if he is no longer eligible to act as an insolvency practitioner in relation to the company; but

(b) otherwise may only resign in accordance with this section.

(2) If a liquidator resigns under subsection (1)*(a)*, he shall send a notice of his resignation to—

(a) the creditors of the company;

(b) the Registrar;

(c) the Official Receiver; and

(d) if he was appointed by the Court, to the Court,

and his resignation takes effect from the date that the notice is received by the Official Receiver.

(3) A liquidator may resign in accordance with subsection (5)—

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(4) Despite subsection (3), if joint liquidators are appointed in respect of a company, one or more of the joint liquidators may resign in accordance with subsection (5) if—

(a) all the joint liquidators are of the opinion that it is no longer necessary or expedient for the resigning liquidator or liquidators to continue in office; and

(b) at least one of them will remain in office.

(5) If the liquidator of a company intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he shall call a meeting of creditors for the purpose of accepting his resignation as liquidator.

(6) If the creditors resolve to accept the resignation of a liquidator, they may appoint an eligible insolvency practitioner as liquidator in his place.

(7) If the creditors refuse or fail to accept the resignation of the liquidator, he may apply to the Court for leave to resign in accordance with the Regulations.

(8) This section does not apply to the Official Receiver when acting as the liquidator of a company.

Appointment of replacement liquidator

291. (1) If the liquidator of a company dies or resigns under section 290(1) and no liquidator is appointed in his place, the Court, on the application of a person specified in subsection (2) or on its own motion—

(a) if there is at least one liquidator remaining in place, may appoint an eligible insolvency practitioner as liquidator in his place; or

(b) if the liquidator who has died or resigned was the sole liquidator of the company, shall appoint the Official Receiver or an eligible insolvency practitioner in his place.

(2) An application under subsection (1) may be made—

(a) by any continuing liquidator;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

(3) If the Official Receiver is the liquidator of a company, an eligible insolvency practitioner may be appointed in his place—

(a) on the application of the Official Receiver, by the Court; or

(b) with the consent of the Official Receiver, by resolution of the creditors at a meeting called by the Official Receiver for that purpose.

(4) An application may be made under subsection (3) even though the Court has refused to make an appointment on a previous application by the Official Receiver.

Remuneration of liquidator

292. The remuneration payable to the liquidator of a company shall be fixed applying the principles specified in the Regulations.

Notification of liquidation on public documents

293. (1) If a company is in liquidation the company's website, if any, and every document of a type specified in subsection (2) shall—

(a) contain a statement that the company is in liquidation; and

(b) specify the name of the liquidator.

(2) Subsection (1) applies to—

(a) every public document issued by or on behalf of the company;

(b) every public document issued by or on behalf of the liquidator of the company on which the name of the company appears.

(3) A failure to comply with subsection (1) does not affect the validity of the document.

(4) If subsection (1) is contravened each liquidator of the company who, without reasonable excuse, causes, permits or acquiesces in the contravention, commits an offence and is liable on summary conviction to a fine of $20,000.

Vesting of assets in liquidator

294. (1) On the application of the liquidator of a company, the Court may order that all or any part of the assets of the company, or held by trustees on its behalf, shall vest in the liquidator from the date of the order.

(2) On the making of an order under subsection (1), the assets covered by the order, vest in the liquidator by his official name.

(3) The liquidator of a company may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to the vested assets or which it is necessary to bring or defend for the purposes of liquidating the company and recovering its assets.

Liability of Members and Former Members

Settlement of list of members

295. (1) Subject to subsection (7), the liquidator of a company shall, as soon as practicable after his appointment, settle a list of the members of the company containing the information and in the specified form.

(2) Immediately after settling the list of members, the liquidator shall give notice to every person included in the list that he has done so in accordance with the Regulations.

(3) If a person objects to any entry in, or exclusion from, the list of members as settled by the liquidator and the liquidator declines to accept the objection, the person may apply to the Court for an order removing the entry to which he objects or modifying the entry.

(4) An application under subsection (3) shall be made within twenty-one days of the service on the applicant of the liquidator's notice declining to accept the objection.

(5) The liquidator of a company is not personally liable for the costs incurred by a person in an application under subsection (3) unless the Court makes an order to that effect.

(6) The liquidator may, from time to time, vary or add to the list of members as previously settled by him and any variation or addition is subject, as regards any person affected, to the provisions of this Act and the Regulations applicable to the settling of the list.

(7) The liquidator is not required to settle a list of members under this section if it appears to him that it will not be necessary to require any member to contribute to the assets of the company or to adjust the rights of members.

Rectification of register of members

296. (1) If it appears to the liquidator of a company that the register of members of the company should be rectified, he may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may rectify the register of members of the company.

Liability of members and former members

297. (1) Subject to sections 299 to 302, every member and former member of a company in liquidation is liable to contribute to the assets of a company in liquidation for the payment of its liabilities, for the expenses of the liquidation and for the adjustment of the rights of the members between themselves.

(2) The liability of a member or former member under this section creates a contract debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Liability of members limited

298. (1) The liability of a member under section 297 is limited to—

(a) any amount unpaid on a share held by the member, including any liability for calls; and

(b) any liability expressly provided for in the memorandum or articles, including such contribution as the guarantee member of a company limited by guarantee may have undertaken to make in the event of the company being wound up.

(2) Subsection (1) does not affect—

(a) any liability of the member to pay or repay monies to the company imposed by a provision of this Act or the Companies Act; or

(b) any liability of a member to the company under a contract, including a contract for the issue of shares, or for any tort, breach of fiduciary duty or other actionable wrong committed by the member.

Liability of former members limited

299. (1) Subject to subsection (2), unless the Court is satisfied that the members of a company are able to discharge the liabilities set out in section 297, a former member of a company in liquidation is liable to contribute to the assets of the company for the purposes specified in that section to the same extent as a member.

(2) A former member—

(a) has no liability under section 297 if he ceased to be a member more than one year before the commencement of the liquidation; and

(b) is not liable to contribute to the assets of the company in respect of any liability of the company contracted after he ceased to be a member.

Liability of personal representative

300. The personal representatives of a member or former member liable to contribute under section 297 who has died, are liable to contribute out of his estate to the assets of the company under section 297 to the same extent as the member.

Effect of member or former member becoming bankrupt

301. The liquidator of a company is entitled to submit a claim in the bankruptcy or liquidation of any member or former member of the company in respect of any contribution that the member or former member is required to make under section 297.

Status of personal representatives or bankruptcy trustee

302. The personal representatives and the bankruptcy trustee of a member or former member of a company in liquidation are entitled to make any application to Court, or take any such other action, as could be made or taken by the member or former member.

Insurance and other contracts not affected

303. Nothing in this Act invalidates any provision contained in a policy of insurance or other contract by which the liability of individual members on the policy or contract is restricted or by which the funds of the company are alone made liable in respect of the policy or contract.

Power of liquidator to enforce liability of member or former member

304. (1) The liquidator of a company may—

(a) if a member is liable to calls, make calls on that member; and

(b) if a member or former member is liable to the company, as a member under section 297, require him, by notice in writing, to discharge that liability.

(2) A call made under subsection (1)*(a)* shall be in writing and shall specify the amount of, or balance due in respect of, the call.

(3) The liability of a member under subsection (1) includes a liability of the estate of the person he represents.

(4) The liquidator may enforce the liability of a member under subsection (1) only if that member is on the list of members settled by him under section 295.

Summary remedy against members and former members

305. (1) The liquidator may apply to the Court for an order under this section if—

(a) a member of a company fails to comply with a call made under section 304(1)*(a)*; or

(b) a member or former member fails to satisfy a liability when required to do so under section 304(1)*(b)*.

(2) On an application under subsection (1), the Court may order a member or former member to pay to the company any money due from him, or due from the estate of the person who he represents.

(3) When all the creditors of a company are paid in full, together with interest at the judgment rate, any money due on any account whatever to a member from the company may be allowed to the member by way of set-off against any subsequent call.

Order under section 305 to be conclusive evidence

306. An order made against a member under section 305 is, subject to any right of appeal, conclusive evidence that the money, if any, ordered to be paid is due.

Claims

Distribution of assets of company

307. (1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in liquidation shall be applied—

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying the preferential claims admitted by the liquidator in accordance with the provisions for the payment of preferential claims prescribed by the Regulations;

(c) after payment of the preferential claims, in paying all other claims admitted by the liquidator; and

(d) after paying all admitted claims, in paying any interest payable under section 316.

(2) Subject to section 251, the claims referred to in subsection (1)*(c)* rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be distributed to the members in accordance with their rights and interests in the company.

(4) For the purposes of this Act, assets held by a company in liquidation on trust for another person are not assets of the company.

Sums due to members

308. (1) A claim by a person who is or was a member of a company, in his character as member, whether by way of dividend, profits, redemption proceeds or otherwise, ranks in priority after the claims of other creditors who are not members, including interest at the judgment rate on the claims of such creditors.

(2) Claims specified in subsection (1) shall be taken into account for the purpose of the final adjustment of the rights of members amongst themselves.

Claims having priority over floating charges

309. So far as the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay—

(a) the costs and expenses of the liquidation in accordance with the prescribed priority; and

(b) the preferential creditors,

those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

Claims by unsecured creditors

310. (1) An unsecured creditor may make a claim against a company in liquidation by submitting to the liquidator a written claim, signed by him or on his behalf.

(2) The liquidator may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)—

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) Subject to subsection (7), as soon as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the liquidator may have imposed under subsection (2), the liquidator shall either admit or reject the claim in whole or in part.

(4) If the liquidator rejects the claim, whether in whole or in part, he shall, as soon as practicable, provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the liquidator under subsection (2).

(6) The liquidator shall not admit a claim against the company unless it has been made in accordance with this section.

(7) The liquidator is not required to admit or reject claims under subsection (3) at any time when it appears to him that the company has insufficient assets to enable a distribution to be made to unsecured creditors.

(8) A person who makes or authorises the making of a claim under this section knowing that—

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim,

commits an offence.

(9) A person who commits an offence under subsection (8) is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

Variation, withdrawal and expunging of claims

311. **(1)** A claim made under section 310 may—

(a) be amended or withdrawn by the creditor at any time before the liquidator has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the liquidator at any time after the liquidator has admitted it.

(2) The Court, on the application of the liquidator or, if the liquidator declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

Claims by secured creditors

312. **(1)** A secured creditor may—

(a) value the assets subject to the security interest and claim in the liquidation of a company as an unsecured creditor for the balance of his debt; or

(b) surrender his security interest to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole of his debt,

but he is not obliged to do either.

(2) A secured creditor may, at any time, apply to the liquidator to amend the value that he placed on the security interest in his claim.

(3) If, on receiving an application under subsection (2), the liquidator is satisfied that—

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed,

he may permit the secured creditor to amend the value that he places on the security interest.

(4) If the liquidator of a company is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)*(a)* or on an amendment under subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the liquidator or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the liquidator are entitled to bid for and purchase them.

Redemption of security interest by liquidator

313. (1) If a secured creditor has claimed in the liquidation of a company under section 312(1)*(a)*, the liquidator may at any time give notice to the creditor that he proposes at the expiration of twenty-eight days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within twenty-one days of the date of the notice, apply to the liquidator to revise the value that he places on the security interest in accordance with section 312(2).

(3) At the expiration of twenty-eight days from the date of the notice under subsection (1), the liquidator may redeem the security interest at the value placed on it by the creditor unless—

(a) the secured creditor has applied to the liquidator to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the liquidator to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) If, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the liquidator or on appeal to the Court, the liquidator may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the liquidator, require him to elect whether or not to exercise his power to redeem under this section.

(6) If a notice to elect is served on a liquidator under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

Realisation of security interest by secured creditor

314. (1) If a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the liquidator for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) If a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the liability secured—

(a) if the creditor has previously valued his security interest and claimed in the liquidation for the balance under section

312(1)*(a)*, the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the liquidation as an unsecured creditor for the balance of the secured liability.

(3) For the purposes of this section, the secured liability includes contractual interest payable to the secured creditor on the liability up to the time of its satisfaction.

Surrender for non-disclosure

315. (1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in the liquidation of a company, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake, by order direct—

(a) that he is not required to surrender his security interest; and

(b) that he values his security interest and amends his claim accordingly.

Interest after commencement of liquidation

316. (1) Interest is payable on any claim in the liquidation of a company in respect of the period after the commencement of the liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the liquidation of a company shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the liquidation.

(3) Subject to section 251, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally and if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(4) The rate of interest payable under this section is the greater of—

(a) the judgment rate; and

(b) the rate that would be applicable to the claim if a liquidator of the company had not been appointed.

Distributions

Power to exclude creditors not claiming in time

317. (1) If the liquidator of a company has sufficient funds to make a distribution, he shall, subject to the retention of such sums as may be

necessary for his remuneration and the other costs and expenses of the liquidation, by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims to him.

(2) If the liquidator sends a notice to creditors under subsection (1), a creditor who does not submit a claim on or before the date specified in the notice is excluded from the benefit of any distribution on or after that date that is made before he submits his claim.

(3) If the liquidator makes more than one distribution, subsections (1) and (2) apply to each distribution.

Disclaimer

Liquidator may disclaim onerous property

318. (1) For the purposes of this section, **"onerous property"** means—

(a) an unprofitable contract; or

(b) assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to section 220, the liquidator of a company may, by the giving of the notice prescribed by the Regulations, disclaim any onerous property of the company even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A liquidator who disclaims onerous property shall, within fourteen days of the date of the disclaimer notice, give notice to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A liquidator who contravenes subsection (3), commits an offence and is liable on summary conviction to a fine of $25,000.

When disclaimer takes effect

319. (1) Subject to subsection (2), a disclaimer takes effect on the date of the disclaimer.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the liquidator is aware of their addresses, to every person claiming under the company as underlessee or mortgagee and either—

(a) no application for a vesting order is made under section 322 with respect to that property before the end of a period of fourteen days beginning with the day on which the last notice under this subsection was given; or

(b) if such an application is made, the Court directs that the disclaimer shall take effect.

(3) If the Court gives a direction under subsection (2)*(b)*, it may also, instead of or in addition to any order it makes under section 322, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

Notice to liquidator to elect whether to disclaim

320. (1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the liquidator, require him to elect whether or not to disclaim the property.

(2) If a notice to elect is served on a liquidator, he is not entitled to disclaim the property under section 318 unless he does so within twenty-eight days of the date of service of the notice on him or within such extended period as the Court may allow.

Effect of disclaimer

321. (1) A disclaimer of onerous property under section 318—

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the company in, or in respect of, the property disclaimed; but

(b) except so far as is necessary to release the company from liability, does not affect the rights or liabilities of any other person.

(2) A person sustaining loss or damage as a result of a disclaimer of onerous property under section 318 may claim in the liquidation of the company as a creditor for the amount of the loss or damage.

Vesting orders and orders for delivery

322. (1) Subject to section 323, if a liquidator disclaims onerous property under section 318, the Court may make an order under subsection (2) on the application of—

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer.

(2) On an application under subsection (1), the Court may, on such terms as it considers appropriate, order that the disclaimed property be vested in or delivered to—

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer; or

(c) a trustee for a person referred to in paragraph *(a)* or *(b)*.

(3) The Court shall not make an order in respect of a person specified in subsection (2)*(b)*, or in respect of a trustee of such a person, unless it

appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage sustained by a person for the purposes of section 321(2).

(5) Subject to subsection (6), if a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) If another enactment—

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that enactment enables the order to be registered,

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

Vesting orders in respect of leases

323. (1) If the Court makes an order under section 322 vesting property of a leasehold nature in a person claiming under the company in liquidation as an underlessee or a mortgagee, the vesting order shall be made on terms that make that person subject—

(a) to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him at the commencement of the liquidation.

(2) If the property vested by an order under section 322 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) If no underlessee or mortgagee is willing to accept a vesting order made subject to subsection (1), the Court, by order—

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the company, to perform the lessee's covenants in the lease; and

(b) if a vesting order is made under paragraph *(a)*, may vest the property free from all estates, encumbrances and interests created by the company.

(4) If an underlessee or a mortgagee declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

Land subject to rentcharge

324. If land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after he, or some person claiming title under or through him, has taken possession or control of the land or has entered into occupation of it.

Disclaimer presumed valid

325. Unless it is proved that a liquidator has breached his duty to give notice under section 318(3) or that he has otherwise breached his duties under this Act or the Regulations with regard to disclaimer, a disclaimer of property by the liquidator is presumed to be valid and effective.

Investigation of Assets and Affairs of Company

Statement of affairs

326. **(1)** The liquidator or provisional liquidator of a company may require one or more relevant persons to prepare a statement of affairs of the company.

(2) Subject to section 328, the liquidator or provisional liquidator shall file with the Court each statement of affairs and each affidavit of concurrence received.

(3) Subsection (2) does not apply to a liquidator appointed by the members of a company.

Release from duty to submit statement of affairs

327. **(1)** A liquidator, a provisional liquidator or the Court may, in accordance with the Regulations—

(a) release a person from an obligation to prepare and submit a statement of affairs; or

(b) extend the period of time for the submission of the statement of affairs.

(2) An order of the Court under this section may be made subject to such terms and conditions as the Court considers appropriate.

Application for order of limited disclosure.

328. **(1)** A liquidator or provisional liquidator who considers that it would prejudice the conduct of the insolvency proceeding for the whole or part of a statement of affairs to be disclosed, may apply to the Court for an order of limited disclosure in respect of the statement of affairs, or any specified part of it.

(2) The Court may, on an application under subsection (1), order that the statement of affairs or a specified part of it is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with the leave of the Court.

(3) An order of the Court under subsection (2) may include directions as to the filing of documents with the Registrar and the disclosure of information to other persons.

Preliminary report

329. (1) The liquidator of a company shall, within sixty days of the commencement of the liquidation, prepare a preliminary report covering, to the best of the liquidator's knowledge and belief, the following matters—

(a) in the case of a company with share capital, the amount of capital issued, subscribed and paid up;

(b) in the case of a company limited by guarantee, the total amount which guarantee members are liable to contribute to the company;

(c) the assets and liabilities of the company;

(d) if the company has failed, the causes of the failure; and

(e) whether, in his opinion, further enquiries are desirable with respect to any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company

(2) The liquidator shall send a copy of the report prepared under subsection (1)—

(a) to each creditor of the company; and

(b) if in the report the liquidator states that further enquiries are desirable with respect to a matter referred to in subsection (1)*(e)*, to the Official Receiver.

(3) Subsection (2)*(b)* does not apply to the Official Receiver when acting as the liquidator of a company.

(4) The Court may, on the application of the liquidator, extend the period specified in subsection (1) on such terms and conditions as it considers appropriate.

Duty of Official Receiver concerning report under section 329

330. On receiving a report under section 329, the Official Receiver shall carry out such investigation, if any, as he considers appropriate.

Miscellaneous Provisions

Liquidator to call meetings of creditors

331. (1) The liquidator shall call a meeting of the creditors of a company in liquidation if—

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Regulations by 10 % in value of the creditors of the company.

Rescission of contracts by the Court

332. (1) On the application of a person who is, as against the liquidator of a company, entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court considers just.

(2) Any damages payable to a person under an order made under subsection (1) may be claimed as a debt in the liquidation of the company.

Inspection of books by creditors

333. (1) At any time after the appointment of a liquidator of a company, the Court may, on such terms as it considers appropriate, make an order for the inspection of specified books, records and documents of the company that are in its possession.

(2) Application for an order under subsection (1) may be made by a creditor or member of the company.

Enforcement of liquidator's duties

334. (1) In this section **"specified person"** means—

(a) the Official Receiver;

(b) a creditor of a company in liquidation; or

(c) a member of a company in liquidation.

(2) If a liquidator fails to file any notice, return, account or other document, a specified person may serve a notice on the liquidator requiring him to remedy the default.

(3) If a liquidator fails to remedy the default specified in a notice served under subsection (1) within fourteen days of service of the notice on him, any specified person may apply to the Court for an order that the liquidator remedy the default within such time as the Court may specify.

(4) The Court may order that the costs of, and incidental to, an application under this section are payable by the liquidator personally.

(5) A liquidator who fails to comply with an order made under subsection (3), commits an offence and is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

(6) This section does not limit any other provision of this Act or any other enactment.

Termination of Liquidation

Termination of liquidation

335. The liquidation of a company terminates on the first occurring of—

(a) the making by the Court of an order terminating the liquidation under section 336 or such later date as may be specified in the order;

(b) the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 337(1)*(b)*, as modified by the Court under section 337(3)*(b)*, if appropriate; or

(c) the making by the Court of an order under section 337(3)*(a)* exempting the liquidator from compliance with section 337(1) or such later date as may be specified in the order.

Order terminating liquidation

336. **(1)** The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company or the Official Receiver.

(3) Before making an order under subsection (1), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers appropriate in connection with the termination of the liquidation.

(5) If the Court makes an order under subsection (1), the company ceases to be in liquidation and the liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) If the Court makes an order under subsection (1), the person who applied for the order shall, within ten days of the date of the order, file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6), commits an offence and is liable on summary conviction to a fine of $10,000.

Completion of liquidation

337. (1) As soon as practicable after completing his duties in relation to the liquidation of a company, the liquidator shall—

(a) prepare and send to every creditor of the company whose claim has been admitted and to every member of the company—

(i) his final report, complying with subsection (2), and a statement of realisations and distributions in respect of the liquidation; and

(ii) a summary of the grounds upon which a creditor or member may object to the striking of the company from the Register; and

(b) file with the Registrar, a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company and a certificate of compliance with paragraph *(a)*.

(2) The final report of a liquidator shall contain a statement—

(a) that all known assets of the company have been disclaimed, realised or distributed without realisation;

(b) that all proceeds of realisation have been distributed; and

(c) that there is no reason why, in his opinion, the company should not be struck from the Register, and dissolved.

(3) On the application of the liquidator, the Court may on such terms and conditions as it considers just—

(a) exempt the liquidator from compliance with subsection (1)*(a)*; or

(b) modify the application of the provisions of subsection (1) to the liquidator.

Release of liquidator

338. (1) A person, other than the Official Receiver, who has ceased to be a liquidator of a company, has his release as follows—

(a) if the person has resigned as liquidator, as provided for in the Regulations;

(b) on the termination of the liquidation by the filing by the liquidator of a certificate of compliance in accordance with the provisions of section 337(1)*(b)* as may be modified by the Court under section 337(3)*(b)*, unless the Court otherwise orders, at the time at which the person vacated office; or

(c) in any other case, as provided for in subsections (2) to (8).

(2) If a person has been removed by the Court as liquidator under section 290 or the Court has terminated the liquidation by order made under section 336, the Court may, when making the order—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(3) A person, other than the Official Receiver, who has ceased to be a liquidator of a company and who has not obtained his release in accordance with subsection (1) or (2) or a person who has ceased to be the provisional liquidator of a company, may apply to the Court for his release and the Court may—

(a) grant the person his release unconditionally or upon such conditions as it considers appropriate; or

(b) withhold the person's release.

(4) Subject to subsection (7), if a former liquidator is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the company.

(5) An order for the release of a former liquidator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(6) If the Official Receiver ceases to be liquidator and another liquidator is appointed in his place, the Official Receiver obtains his release—

(a) from the appointment of the new liquidator; or

(b) such later date as the Court may determine.

(7) In any other case, the Official Receiver obtains his release as provided by the Regulations.

(8) A liquidator who obtains his release under this section shall file a notice in the specified form with the Registrar.

Dissolution

339. The Regulations shall provide for the dissolution of a company on the termination and completion of the liquidation of the company.

Liquidation of Unregistered Companies

Grounds for appointment of liquidator of unregistered company

340. (1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as the liquidator of an unregistered company if—

(a) it is insolvent;

(b) it is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

(c) it has ceased to carry on business;

(d) it is carrying on business only for the purpose of winding up its affairs;

(e) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(f) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Without limiting subsection (1)*(f)*—

(a) the **"public"** includes the public within and outside Montserrat; and

(b) the preservation of the reputation of Montserrat is a matter of public interest.

(3) The Court shall not appoint a liquidator of an unregistered company unless it is satisfied that it has a connection with Montserrat.

(4) For the purposes of subsection (3), an unregistered company has a connection with Montserrat only if—

(a) it has or appears to have, or to have had, assets in Montserrat;

(b) it is carrying on, or has carried on, or purported to carry on, business in Montserrat; or

(c) there is a reasonable prospect that the appointment of a liquidator of the unregistered company under this Part will benefit the creditors of the company.

(5) An application for the appointment of a liquidator of an unregistered company may be made—

(a) even though it has been dissolved or has otherwise ceased to exist under, or by virtue of, the laws of any other country; and

(b) whether or not it is, or has been registered under Part XII.

(6) The Commission may only make an application to appoint a liquidator under subsection (1) if the unregistered company concerned is, or at any time has been, a financial institution or the company is carrying on, or at any time has carried on, unlicensed financial services business.

This Part to apply subject to Regulations

341. Subject to the modifications and exceptions set out in this Part or the Regulations, the provisions of this Part apply to an application to appoint a liquidator of an unregistered company and to the liquidation of an unregistered company.

Division 4

Voidable Transactions

Interpretation

342. In this Division—

"company" means a company in liquidation;

"connected person" has the meaning specified in the Regulations;

"insolvent liquidation" means a liquidation of a company where the assets of the company are insufficient to pay its liabilities and the expenses of the liquidation;

"insolvency transaction" has the meaning specified in section 343;

"onset of insolvency" means—

(a) if the liquidator was appointed by the Court, the date on which the application for the appointment of the liquidator was filed; or

(b) if the liquidator was appointed by the members, the date of the liquidator's appointment; and

"voidable transaction" means—

(a) an unfair preference;

(b) an undervalue transaction;

(c) a floating charge that is voidable under section 346; and

(d) an extortionate credit transaction;

"vulnerability period", means—

(a) for the purposes of sections 344, 345 and 346—

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing two years before the onset of insolvency and ending on the appointment of the liquidator; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months before the onset of insolvency and ending on the appointment of the liquidator; and

(b) for the purposes of section 347, the period commencing five years before the onset of insolvency and ending on the appointment of the liquidator.

Meaning of "insolvency transaction"

343. (1) A transaction is an insolvency transaction if—

(a) it is entered into at a time when the company is insolvent; or

(b) it causes the company to become insolvent.

(2) For the purposes of subsection (1)—

(a) a company—

(i) is presumed to have been insolvent if, at the time, either of the circumstances specified in section 245 *(a)* applied to it; and

(ii) was insolvent if, at the time, section 245 *(b)*(i) applied to it; and

(b) section 245*(b)*(ii) has no application.

Unfair preferences

344. (1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction—

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the company going into insolvent liquidation, would be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside Montserrat.

(4) Where a transaction entered into by a company within the vulnerability period has the effect specified in subsection (1)*(c)* in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

Undervalue transactions

345. (1) Subject to subsection (2), a company enters into an undervalue transaction with a person if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and

(c) in either case, the transaction concerned—

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if—

(a) the company enters into the transaction in good faith and for the purposes of its business; and

(b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside Montserrat.

(4) Where a company enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)*(a)* or subsection (1)*(b)*, unless the contrary is proved, it is presumed that—

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

Voidable floating charges

346. (1) Subject to subsection (2), a floating charge created by a company is voidable if—

(a) it is created within the vulnerability period; and

(b) it is an insolvency transaction.

(2) A floating charge is not voidable to the extent that it secures—

(a) money advanced or paid to the company, or at its direction, at the same time as, or after, the creation of the charge;

(b) the amount of any liability of the company discharged or reduced at the same time as, or after, the creation of the charge;

(c) the value of assets sold or supplied, or services supplied, to the company at the same time as, or after, the creation of the charge; and

(d) the interest, if any, payable on the amount referred to in paragraphs *(a)* to *(c)* pursuant to any agreement under which the money was advanced or paid, the liability was discharged or reduced, the assets were sold or supplied or the services were supplied.

(3) For the purposes of this section, where a company creates a floating charge in favour of a connected person within the vulnerability period, unless the contrary is proved, it is presumed that the charge was an insolvency transaction.

(4) For the purposes of subsection (2)*(c)*, the value of assets or services sold or supplied is the amount in money which, at the time they were sold or supplied, could reasonably have been expected to be obtained for the sale or supply of the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which the assets or services were sold or supplied to the company.

Extortionate credit transactions

347. A transaction entered into by a company within the vulnerability period for, or involving the provision of, credit to the company is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit—

(a) the terms of the transaction are, or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

Orders in respect of voidable transactions

348. (1) Subject to section 349, where it is satisfied that a transaction entered into by a company is a voidable transaction the Court, on the application of the liquidator—

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers appropriate for restoring the position to what it would have been if the company had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following—

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is, or was a party to the transaction to the liquidator of any sums paid by the company to that person by virtue of the transaction;

(iii) the surrender by any person to the liquidator of any asset held by him as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)*(b)*, an order under that paragraph may—

(a) require any assets transferred as part of the transaction to be vested in the company;

(b) require any assets to be vested in the company if it represents in any person's hands the application either of the proceeds of sale of assets transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the company or the liability of the company under any contract;

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any assets and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person affected by an order made under subsection (1) to submit a claim in the liquidation of the company in such amount as the Court considers appropriate; and

(h) require the company to make a payment or transfer assets to any person affected by an order made under subsection (1).

(3) Subject to section 349, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction.

Limitations on orders under section 348

349. (1) This section applies to an order made under section 348 in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not—

(a) prejudice any interest in assets that was acquired in good faith and for value from a person other than the company, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the company.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph *(a)* or *(b)*, it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person—

(a) who, at the time of the transaction, had notice of–

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if—

(a) in the case of a company in administration, he had notice of the filing of the application on which the administration order was made;

(b) in the case of a company where a liquidator was appointed immediately following the discharge of an administration order, he had notice of the filing of the application on which the administration order was made or the filing of the application on which the order appointing a liquidator was made; or

(c) in the case of a company where a liquidator was appointed in circumstances other than those set out in paragraph *(b)*, he had notice of the filing of the application on which the order appointing a liquidator was made.

Recoveries

350. Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 248 are deemed to be assets of the company available to pay unsecured creditors of the company.

Remedies not exclusive

351. The provisions of this Part apply without prejudice to the availability of any other remedy, even in relation to a transaction that the company had no power to enter into.

Division 5

Malpractice

Scope of this Division

352. This Division applies in relation to a company if a liquidator of the company is appointed at a time when the company's assets are insufficient to pay its liabilities and the expenses of the liquidation.

Summary remedy against delinquent directors and others

353. **(1)** On the application of the liquidator of a company to which this Division applies, the Court may make an order under subsection (3) where it is satisfied that a person specified in subsection (2)—

(a) has misapplied or retained, or become accountable for any money or other assets of the company; or

(b) has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) An order under subsection (3) may be made against a person—

(a) who is or has been a director or other officer of the company;

(b) who has acted as liquidator of the company;

(c) who has acted as receiver-manager of the company;

(d) who has acted as a receiver appointed by the Court; or

(e) who, not being a person falling within paragraphs *(a)* or *(b)*, is or has been concerned in the promotion, formation, management, liquidation or dissolution of the company.

(3) Where subsection (1) applies, the Court may make one or more of the following orders against the person—

(a) that he repays, restores or accounts for the money or other assets, or any part of it;

(b) that he pays to the company, as compensation for the misfeasance or breach of duty, such sum as the Court considers just; and

(c) that he pays interest to the company at such rate as the Court considers just.

(4) The Court shall not make an order under subsection (3) unless it has given the person the opportunity—

(a) to give evidence, call witnesses and bring other evidence in relation to the application; and

(b) to be represented, at his own expense, by an attorney-at-law who may put to him, or to other witnesses, such questions as the Court may allow for the purpose of explaining or qualifying any answers or evidence given.

(5) Application may not be made for an order under this section against a liquidator who has been released, except with the leave of the Court.

(6) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Fraudulent trading

354. (1) On the application of the liquidator of a company to which this Division applies, the Court may make an order under subsection (2) where it is satisfied that, at any time before the commencement of the liquidation of the company, any of its business has been carried on—

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose.

(2) Where subsection (1) applies, the Court may declare that any person who was knowingly a party to the carrying on of the business in such manner is liable to make such contribution, if any, to the company's assets as the Court considers proper.

Insolvent trading

355. (1) On the application of the liquidator of a company to which this Division applies, the Court may make an order under subsection (2) against a person who is or has been a director or other officer of the company if it is satisfied that—

(a) at any time before the commencement of the liquidation of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

(b) the person was a director or other officer of the company at that time.

(2) Subject to subsection (3), where subsection (1) applies, the Court may order that that the person concerned makes such contribution, if any, to the company's assets as the Court considers proper.

(3) The Court shall not make an order against a person under subsection (2) if it is satisfied that after he first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step reasonably open to him to minimise the loss to the company's creditors.

(4) For the purposes of subsections (1) and (3), the facts which a director or other officer of a company ought to know or ascertain, the conclusions which he ought to reach and the steps reasonably open to him which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director or officer in relation to the company; and

(b) the general knowledge, skill and experience that that director or officer has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director or other officer of the company includes any function which he does not carry out but which has been entrusted to him.

(6) Nothing in this section affects section 354.

Recoveries under sections 354 and 355

356. Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 354 or 355 are deemed to be assets of the company available to pay unsecured creditors of the company.

Ancillary orders

357. (1) Where the Court makes an order under section 354 or 355, it may give such directions or make such further order as it considers proper for giving effect to the order.

(2) Without limiting subsection (1), the Court may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee

from or through the person liable or any person acting on his behalf; and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), **"assignee"**—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under either section 354 or 355 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest on the debt shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 354 and 355 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

Fraudulent conduct

358. (1) Where a liquidator of a company was appointed by the Court, a person who is or has been a director or other officer of the company is deemed to have committed an offence if, at any time whilst a director or officer or during the period of twelve months preceding the commencement of the liquidation, he has—

(a) made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of any execution against the company's assets; or

(b) has concealed or removed any of the company's assets since, or within, sixty days of the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person is not guilty of an offence under this section–

(a) by reason of conduct constituting an offence under subsection (1)*(a)* which occurred more than five years before the commencement of the liquidation; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction to—

(i) twelve months' imprisonment; or

(ii) a fine of $50,000;

(b) on conviction on indictment to—

(i) five years' imprisonment; or

(ii) a fine of $100,000.

Malpractice in anticipation, and after commencement, of liquidation

359. (1) Where a liquidator of a company is appointed by the Court or by the members, any person, being a past or present director or other officer of the company, is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has—

(a) concealed any of the company's assets to the value of $300 or more or concealed any debt due to or from the company;

(b) fraudulently removed any of the company's assets to the value of $300 or more;

(c) concealed, destroyed, mutilated, altered or falsified any book or paper affecting or relating to the company's assets or affairs, including any security;

(d) made any false entry in any register, book or document belonging to the company or affecting or relating to its assets or affairs;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's assets or affairs; or

(f) pawned, pledged or disposed of any assets of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(2) A person specified in subsection (1)—

(a) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, the person has been privy to the doing by others of any of the things mentioned in subsection (1)*(c)*, *(d)* or *(e)*; and

(b) commits an offence if, at any time after the commencement of the liquidation, the person does any of the things mentioned in subsection (1)*(a)* to *(f)*, or is privy to the doing by others of any of the things mentioned in paragraphs *(c)* to *(e)* of that subsection.

(3) It is a defence—

(a) to a charge under—

(i) subsection (1)*(a)* or *(f)*; or

(ii) subsection (2) in respect of the things mentioned in either of those two paragraphs,

if the person charged proves that he had no intent to defraud; or

(b) to a charge under—

(i) subsection (1) *(c)* or *(d)*; or

(ii) subsection (2) in respect of the things mentioned in either of those two paragraphs,

if the person charged proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) Where a person pawns, pledges or disposes of any assets in circumstances which amount to an offence under subsection (1)*(f)*, every person who takes in pawn or pledge, or otherwise receives, the assets knowing them to be pawned, pledged or disposed of in such circumstances, commits an offence.

(5) A person who commits an offence under this section is liable—

(a) on summary conviction to—

(i) twelve months' imprisonment; or

(ii) a fine of $50,000;

(b) on conviction on indictment to—

(i) two years' imprisonment; or

(ii) a fine of $100,000.

Misconduct in course of liquidation

360. (1) Where a company is in liquidation, any person, being a past or present director or other officer of the company, commits an offence if the person—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's assets, and how and to whom and for what consideration and when the company disposed of any of its assets (except such assets as have been disposed of in the ordinary way of the company's business);

(b) does not deliver up to the liquidator, or as the liquidator directs, all assets of the company in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator as soon as practicable; or

(e) after the commencement of the liquidation, prevents the production of any book or paper affecting or relating to the company's assets or affairs.

(2) A person specified in subsection (1)—

(a) commits an offence if, after the commencement of the liquidation, he attempts to account for any part of the company's assets by fictitious losses or expenses; and

(b) is deemed to have committed an offence if, within the twelve months immediately preceding the commencement of the liquidation, he has attempted to account for any part of the company's assets by fictitious losses or expenses at any meeting of the company's creditors.

(3) It is a defence to a charge under—

(a) subsection (1)*(a)*, *(b)* or *(c)*, if the person charged proves that he had no intent to defraud; or

(b) subsection (1)*(e)* of, if the person charged proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

Falsification of company's books by member

361. (1) Where a company is in liquidation, a member of the company commits an offence if he—

(a) destroys, mutilates, alters or falsifies any books, papers or securities; or

(b) makes, or is privy to, the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person.

(2) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

Material omissions from statement relating to company's affairs

362. (1) Where a company is in liquidation, any person, being a past or present director or other officer of the company—

(a) commits an offence if he makes any material omission in any statement relating to the company's affairs; and

(b) is deemed to have committed that offence if, before liquidation, he has made any material omission in any such statement.

(2) It is a defence to a charge under this section if the person charged proves that he had no intent to defraud.

(3) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

False representations to creditors

363. (1) Where a company is in liquidation, any person, being a past or present director or other officer of the company—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the liquidation; and

(b) is deemed to have committed that offence if, before liquidation, he has made any false representation, or committed any other fraud, for that purpose.

(2) A person who commits an offence under this section is liable on summary conviction to—

(a) twelve months' imprisonment; or

(b) a fine of $50,000.

PART 15

INVESTIGATION OF COMPANIES

Definition of "inspector"

364. In this Part, **"inspector"** means an inspector appointed by an order made under section 365(2).

Investigation order

365. (1) A member of a company or the Registrar may apply to the Court *ex parte* or on the notice that the Court may require, for an order that the company and any of its affiliates be investigated.

(2) If, on an application under subsection (1), it appears to the Court that—

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud;

(b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or

(c) a person who is concerned with the incorporation, business or affairs of the company or any of its affiliates has in connection with the company or any of its affiliates acted fraudulently or dishonestly,

the Court may make any order it considers appropriate with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under subsection (1)—

(a) the member shall give the Registrar reasonable notice of the application; and

(b) the Registrar is entitled to appear and be heard at the hearing of the application.

(4) An applicant under this section is not required to give security for costs.

Court's powers

366. (1) An order under section 365(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) The Court may, make an order it considers appropriate with respect to the investigation, including an order to—

(a) replace the inspector;

(b) determine the notice to be given to an interested person, or dispense with notice to a person;

(c) authorise the inspector to enter any premises in which the Court is satisfied there may be relevant information and to examine anything, and to make a copy of a document or record found on the premises;

(d) require a person to produce a document or record to the inspector;

(e) authorise the inspector to conduct a hearing, administer an oath or affirmation and examine a person on oath or affirmation and prescribe rules for the conduct of the hearing;

(f) require a person to attend a hearing conducted by the inspector and to give evidence on oath or affirmation;

(g) give directions to the inspector or an interested person on a matter arising in the investigation;

(h) require the inspector to make an interim or final report to the Court;

(i) determine whether a report of the inspector should be published and if so, order the Registrar to publish the report or an extract from the report or send a copy of the report or an extract from the report to a person the Court designates;

(j) require an inspector to discontinue an investigation; or

(k) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of each report he makes under this section.

(4) The Registrar may disclose a report filed under subsection (3) to a person only in accordance with an order of the Court made under subsection (2)*(i)*.

Inspector's powers

367. An inspector—

(a) has the powers set out in the order appointing him; and

(b) shall give an interested person a copy of the order on request.

Hearing *in camera*

368. (1) An application under this Part and subsequent proceedings including an application for directions in respect of a matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part—

(a) may appear and be heard at the hearing; and

(b) is entitled to be represented by an attorney-at-law appointed by him for the purpose.

(3) A person shall not publish a matter relating to proceedings under this Part unless authorised by the Court.

(4) A person who contravenes subsection (3), commits an offence and is liable on summary conviction to a fine of $5,000.

Incriminating evidence

369. A person is not excused from attending a hearing conducted by, and giving evidence and producing documents and records to, an inspector appointed by the Court under this Part solely because the evidence may incriminate that person or subject him to any proceeding or penalty, but the evidence shall not be used or received against that person in any later proceeding instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege

370. **(1)** An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of an attorney-at-law and his client.

PART 16

ADMINISTRATION AND GENERAL

Registrar of Companies

371. **(1)** The Governor—

(a) shall appoint a suitably experienced person to be Registrar of Companies; and

(b) may appoint one or more Deputy Registrars of Companies, on the terms and conditions he considers appropriate.

(2) The Registrar and any Deputy Registrars are employees of the Commission.

(3) The Registrar is responsible for the administration of this Act.

(4) A Deputy Registrar shall assist the Registrar in the performance of his duties and is subject to the general and specific directions of the Registrar.

(5) Whenever the Registrar is on leave, ill or otherwise unable to perform the duties of Registrar, the Deputy Registrar shall act as Registrar and while acting, has all the powers and duties of the Registrar.

(6) The Registrar and any Deputy Registrars are not liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.

Registers and qualifying documents

372. **(1)** The Registrar shall maintain—

(a) a Register of Companies;

(b) a Register of Foreign Companies;

(c) a Register of Registered Charges; and

(d) a Register of Persons with Significant Control.

(2) A Register maintained by the Registrar and the information contained in a document filed shall be kept in the manner that the Registrar considers fit, including, by means of a device or facility that—

(a) records or stores information magnetically, electronically or by other means; and

(b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar may establish systems and facilities to enable—

(a) the filing of a document and the provision of information to the Registrar in electronic form; and

(b) the issuance of certificates and other documents in electronic form.

(4) The Regulations may provide for the form and operation of the Registers.

(5) Without limiting subsection (4), the Regulations may—

(a) provide that—

(i) specified qualifying documents;

(ii) specified types or descriptions of qualifying documents;

(iii) qualifying documents filed by specified persons or by specified types or descriptions of person; or

(iv) all qualifying documents,

may only be filed by electronic means; and

(b) specify requirements concerning—

(i) the keeping by the Registrar of the Registers, and of qualifying documents filed in electronic or any other form;

(ii) the filing of qualifying documents in both paper and electronic form; and

(iii) the issuance by the Registrar of certificates and other documents in electronic form.

(6) Regulations shall be made under subsection (5)*(a)* in relation to a qualifying document or documents only if the Registrar has established systems and facilities that enable a specified document to be filed in electronic form.

(7) Subject to subsection (8), the Registrar—

(a) shall retain each qualifying document filed; and

(b) shall not retain any document filed that is not a qualifying document.

(8) The Registrar shall not accept a qualifying document for filing unless the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

(9) For the purposes of this section, a document is a qualifying document if the Act or the Regulations, or another enactment, require or expressly permit the document to be filed.

Registration of particulars of members and directors

373. (1) A company shall, no more than fourteen days after its incorporation or continuation, file a notice in the approved form setting out the prescribed particulars of each member in, and each director of, the company.

(2) A company shall, no more than fourteen days after any change to the particulars recorded in its register of members or its register of directors, file a notice in the approved form setting out details of the change.

(3) The Registrar shall, on receipt of a notice under subsection (1) or (2), register the particulars in the Register of Companies against the company concerned.

Filing of returns, notices and documents

374. (1) A company shall file such returns, notices and documents as may be prescribed.

(2) Except as otherwise provided in this Act or the Regulations, a return, notice or other document required or permitted to be filed by a company under this Act, may only be filed—

(a) in the case of a company that is required to appoint a licensed company manager as its registered agent, other than a reporting company, by the registered agent of the company;

(b) in the case of a company that does not fall within paragraph *(a)*, by the company or the registered agent of the company; or

(c) if a liquidator is appointed in respect of a company, by the liquidator.

(3) The Regulations may provide for the filing and registration of documents, or certain specified types of document, on public holidays.

Inspection of Registers and documents filed

375. (1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may—

(a) inspect the Registers maintained by the Registrar under section 372(1);

(b) inspect and take an extract from any document retained by the Registrar;

(c) require a certified or uncertified copy of the certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy of any document or any part of a document of which the Registrar has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing or a certified copy or extract is *prima facie* evidence of the matters contained in that document.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

(3) Subsection (2) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form.

(4) An extract certified by the Registrar as containing particulars of a registered document filed in electronic form is, in the absence of proof to the contrary, conclusive evidence of the filing and registration of those particulars.

Certificate of good standing

376. (1) The Registrar shall, at a person's request issue a certificate of good standing certifying that a company is of good standing if he is satisfied that—

(a) the company is on the Register of Companies; and

(b) the company has paid fees and penalties that are due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain the statements specified in the Regulations.

(3) Despite subsection (1), the Registrar may refuse to issue a certificate of good standing if, in his opinion, it would not be in the public interest to do so.

Issue of other certificates

377. The Registrar may, at a person's request, issue a certificate confirming—

(a) information recorded on the Register in relation to a company; or

(b) the status of a company.

Fees and penalties to be paid to Registrar

378. (1) The prescribed fees and penalties shall be payable to the Registrar.

(2) Unless this Act or the Regulations provide otherwise, in the case of a company that is required to appoint a licensed company manager as its registered agent, other than a reporting company, the registered agent is the only person authorised to pay a prescribed fee or penalty to the Registrar, and the Registrar shall not accept a fee or penalty paid by any other person.

(3) The Registrar may refuse to take action required under this Act for which a fee is payable until a company pays the fee payable and all outstanding fees and penalties.

(4) A company that is struck off the Register of Companies is liable for the fees and penalties payable under this Act.

(5) Where permitted to do so by the Regulations, the Registrar may waive or reduce a prescribed penalty.

Recovery of fees and penalties

379. A fee or penalty payable under this Act or the Regulations that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable by the Commission before a Magistrate in civil proceeding despite the amount sought to be recovered.

Offence provisions

380. If a corporation commits an offence under this Act, a director or other officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

Time

381. (1) Unless this Act or the Regulations expressly provide otherwise, if the Act or the Regulations specify a time within which an action shall or may be done, the Court—

(a) may extend the time either before or after it has expired; or

(b) abridge the time,

on such terms as it considers appropriate.

(2) Without limiting subsection (1), if it is satisfied that an application is urgent, the Court may—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by the Act or the Regulations.

PART 17

MISCELLANEOUS AND TRANSITIONAL

Regulations

382. (1) The Governor, acting on the advice of the Cabinet, may, after consultation with the Commission, make Regulations generally for giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may—

(a) prescribe—

(i) annual and other fees to be paid by companies and foreign companies to the Registrar;

(ii) fees payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act; and

(iii) fees or other amounts payable to the Registrar in respect of any other matter under this Act;

(b) prescribe annual and other returns, notices and documents to be filed by companies and foreign companies; and

(c) provide for penalties for any contravention of, or failure to comply with, specified requirements of this Act or the Regulations.

(3) The Regulations may make different provision in relation to different persons, circumstances or cases.

(4) The Regulations are subject to negative resolution of the Legislative Assembly.

Approval of forms by Commission

383. (1) If this Act or the Regulations require a document to be in the approved form, the Commission shall, by publication in the prescribed manner, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act or the Regulations, approve a form to be used for the document.

(3) If, under subsection (1) or (2), the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document shall—

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.

Guidance

384. The Commission may issue guidance concerning compliance with the requirements of this Act and the Regulations and concerning such other matters as it considers relevant to its functions under or in relation to this Act.

Jurisdiction

385. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities of a company is in Montserrat.

Declaration by Court

386. (1) A company may apply to the Court, by originating summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the articles of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, insofar as regards the discharge of a fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

Judge in Chambers

387. A Judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

Transitional provisions and savings

388. The transitional provisions and savings are as set out in Schedule 2.

Amendment of Schedules

389. (1) The Governor, acting on the advice of the Cabinet, may, after consultation with the Commission, by order amend the Schedules to this Act.

(2) An order made under subsection (1) is subject to a negative resolution of the Legislative Assembly.

SCHEDULE 1

(Section 288)

POWERS OF LIQUIDATOR

1. Power to pay any class of creditors in full.

2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.

3. Power to compromise, on such terms as may be agreed—

(a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and

(b) questions relating to or affecting the assets or the liquidation of the company,

and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

4. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.

6. Power to sell or otherwise dispose of property of the company.

7. Power to do all acts and execute, in the name and on behalf of the company, any deeds, receipts or other document.

8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out, in his official name, letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past

member or debtor, or his estate, that cannot conveniently be done in the name of the company.

For the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself.

13. Power to call meetings of creditors or members for—

(a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;

(b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or

(c) such other purpose connected with the liquidation as the liquidator considers appropriate.

14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.

15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

SCHEDULE 2

(Sections 167, 288)

TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

1. In this Schedule—

"former Companies Act company" means a former Act company incorporated or continued under the former Companies Act;

"former Companies Register" means the Register of Companies maintained under the former Companies Act;

"IBC" means a former Act company incorporated on continued under the International Business Companies Act;

"IBC Register" means the Register of International Business Companies maintained under the International Business Companies Act;

"LLC" means a former Act company formed under the Limited Liability Company Act;

"LLC Register" means the Register of Limited Liability Companies maintained under the Limited Liability Company Act; and

"re-registration date", in relation to a former Act company, means—

(a) in the case of a former Companies Act company and an IBC, the date when it is re-registered under this Act, whether on application under paragraph 3 or under paragraph 4(1); and

(b) in the case of a LLC, the date when it is re-registered under this Act on application under paragraph 3.

Application by former Act company to re-register under this Act

2. (1) A former Companies Act Company, an IBC or an LLC that, on the date immediately prior to the commencement of this Act, is on the former Companies Register, the IBC Register or the LLC Register may, during the transition period, apply to the Registrar to re-register as a company under this Act.

(2) An application for the re-registration of a former Act company as a company under this Act shall—

(a) be, and contain the information specified, in the approved form; and

(b) be accompanied by—

(i) articles of incorporation that, subject to sub-paragraph (4), comply with section 7;

(ii) a document signed by the registered agent signifying his consent to act as the registered agent of the company on its re-registration;

(iii) in the case of an application made by an IBC that is authorised by its Memorandum to issue bearer shares, a declaration that, as at the date of the application there are no bearer shares of the company in issue; and

(iv) such other documents as may be prescribed.

(3) In the case of a former Act company which, on its re-registration, will be a relevant company for the purposes of Part 5, Division 2 (Persons with Significant Control over a Relevant Company), a person applying to re-register the company shall provide the Commission with the PSC information for each person who is a registrable person in relation to the company and the PSC verification evidence with respect to that PSC information.

(4) In addition to the matters required under section 7, the articles shall state—

(a) the date that the company was first incorporated or, if appropriate, continued or registered as a consolidated company, under a former Act; and

(b) under which former Act it was governed before its re-registration under this Act.

(5) Subject to sub-paragraph (6), an application to re-register under this paragraph shall be authorised, and the articles shall be approved, by—

(a) in the case of a former Companies Act company, a special resolution of the members of the company;

(b) in the case of an IBC, a resolution of the members of the company or, unless the original memorandum or articles provide otherwise, by a resolution of directors; and

(c) in the case of an LLC, by a resolution of the members of the LLC.

(6) The directors of an IBC shall not have any power to approve the articles to the extent that they amend the memorandum and articles of the company in effect at the date of the application ("the original memorandum and articles"), unless the directors would otherwise be authorised to make amendments having the same effect to the original memorandum and articles.

Re-registration by the Registrar

3. (1) Subject to sub-paragraph (2), the Registrar, if satisfied that the requirements of this Act in respect of re-registration have been complied with, shall upon receipt of an application and the other documents specified in paragraph 2—

(a) register the documents;

(b) allot a unique number to the company; and

(c) issue a certificate of re-registration to the company in the approved form.

(2) The Registrar may refuse to re-register a former Act company under this Part if the company is in default of any obligation under a former Act under which it is incorporated, registered or continued, including an obligation to pay any fee or penalty due on or before the date of its re-registration.

(3) A certificate of re-registration is conclusive evidence that—

(a) all the requirements of this Schedule as to re-registration have been complied with; and

(b) the company is re-registered under this Act on the date specified in the certificate of re-registration.

(4) The unique number allotted to a company under sub-paragraph (1) may be the number previously allocated by the Registrar to the company as a former Act company.

(5) Except as otherwise provided in this Act, a company that is re-registered under this paragraph shall be subject to this Act as if it were a company incorporated under this Act and paragraphs 4, 5, 7, 8(1) to (3) and 9 to 11 do not apply to the company.

Former Act companies deemed to be re-registered under this Act

4. (1) Subject to the provisions of this paragraph, at the end of the transition period, every former Act company that is on the former Companies Register or the IBC Register is deemed to be re-registered under this Act.

(2) If the Registrar does not determine an application for the re-registration of a former Act company before the end of the transition period, the company is deemed to be re-registered under this Act in accordance with sub-paragraph (1).

(3) No certificate of re-registration shall be issued by the Registrar under paragraph 3 after the end of the transition period.

(4) If a company is re-registered under sub-paragraph (1), the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(5) The unique number allotted to a company under sub-paragraph (4) may, at the discretion of the Registrar, be the number previously allocated by the Registrar to the company as a former Act company.

Type of company on re-registration under paragraph 4(1)

5. (1) The following apply to a former Act company that is re-registered under paragraph 4(1)—

(a) if immediately prior to the commencement of this Act, the company is a former Companies Act company limited by shares or an IBC, it shall be re-registered under this Act as a company limited by shares; and

(b) if immediately prior to the commencement of this Act, the company is a former Companies Act company that is registered as a non-profit company, it shall be re-registered under this Act as a non-profit company.

(2) A former Companies Act company that, immediately prior to the commencement of this Act, is a public company shall be re-registered as a public company under this Act.

Use of word "Montserrat" in name of former Act company re-registered under this Act

6. For the avoidance of doubt, section 15(1)*(f)* does not apply to a former Act company on re-registration under this Act if the registered name of the company under the former Act, immediately before re-registration under this Act, contained the word "Montserrat".

Certificate of re-registration

7. (1) The Registrar shall not be required to issue a certificate of re-registration to a former Act company that is re-registered under paragraph 4(1) unless it applies for a certificate of re-registration and pays a fee of $25.00.

(2) A certificate of re-registration issued under sub-paragraph (1) shall state—

(a) the former Act under which the company was first incorporated or, in the case of an IBC if appropriate, the date with effect from which it was continued or continued or registered as a consolidated company under the International Business Companies Act and the date of its incorporation, continuation or consolidation;

(b) the type of company that the former Act company is re-registered as; and

(c) that the former Act company was re-registered under this Act and the date of its re-registration.

Registered office and registered agent

8. (1) If a company is re-registered under paragraph 4(1), its registered office for the purposes of this Act is the registered office of the company under the former Act immediately before its re-registration.

(2) On the re-registration of a former Act company under paragraph 4(1), that, immediately before its re-registration, was an IBC, its registered

agent is the person who was its registered agent under the IBC Act immediately before its re-registration.

(3) A former company which is re-registered under paragraph 4(1) shall, within two months of its re-registration—

(a) appoint a person eligible to act as registered agent under section 79 as its registered agent; and

(b) file a notice of appointment of its registered agent in the approved form.

(4) On the re-registration of a company under paragraph 3(1)—

(a) its registered office is the place specified in its application to re-register as its registered office; and

(b) its registered agent is the person specified in its application to re-register as its registered agent.

PSC Information

9. (1) A former Act company which is re-registered under paragraph 4(1) shall, if a relevant company, within two months of its re-registration, file a notice specifying the PSC information for each person who is a registrable person in relation to the company and file the PSC verification evidence with respect to that PSC information.

(2) A former Act company that contravenes sub-paragraph (1) commits an offence and is liable on summary conviction to a fine of $10,000.

Constitutional documents

10. (1) The following are deemed to be the articles of incorporation of a former Act company that is re-registered under paragraph 4(1)—

(a) in the case of a former Act company that was, immediately before its re-registration, a former company, its articles of incorporation; and

(b) in the case of a former Act company that was, immediately before its re-registration, an IBC, its memorandum of association.

(2) The following are deemed to be the by-laws of a former Act company that is re-registered under paragraph 4(1)—

(a) in the case of a former Act company that was, immediately before its re-registration, a former Companies Act company, its by-laws; and

(b) in the case of a former Act company that was, immediately before its re-registration, an IBC, its articles of association.

Dissolution of LLC and order declaring dissolution void

11. (1) A former Act company that is on the LLC Register at the end of the transition period, is deemed to be dissolved at the end of the transition period.

(2) An application may be made to the Court for an order declaring the deemed dissolution of a LLC under sub-paragraph (1) to be void.

(3) An application under sub-paragraph (2)—

(a) may be made by the LLC or a creditor, member or liquidator of the LLC; and

(b) shall be made within two years of the end of the transition period.

(4) A person who makes an application under sub-paragraph (2) must serve a notice of the application on—

(a) the Registrar of Companies;

(b) the Financial Secretary; and

(c) if the company was a financial institution before its dissolution, the Commission,

and each person referred to in sub-paragraphs *(a)* to *(c)* is entitled to appear and be heard on the hearing of the application.

(5) On an application under sub-paragraph (2), the Court may declare the dissolution of the LLC void, subject to such conditions as the Court considers just.

(6) If the Court makes an order under sub-paragraph (5), the LLC is deemed—

(a) never to have been dissolved; and

(b) to have been re-registered as a company at the end of the transition period.

(7) If the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of re-registration to the company in the approved form and the re-registration has effect from the date of the Court order or such other date as may be specified in the order.

(8) Sections 242 and 243 of this Act apply in relation to an LLC that is struck off under this paragraph as if the LLC was a company, with such modifications as the circumstances require.

Registration of charges created before commencement date

12. (1) This section applies to a company that is re-registered, on application or under paragraph 4(1).

(2) A company to which this section applies may apply to register a charge created before its re-registration date.

(3) Section 170 applies to an application made under sub-paragraph (1) as if the charge was a relevant charge.

(4) If a charge is registered in accordance with this paragraph—

(a) the charge shall be entered in the company's register of charges kept under section 169;

(b) sections 171, 172, 173, 175 and 176 apply with respect to the charge as if it was a relevant charge; and

(c) section 174 does not apply with respect to the charge, even though it is a charge created before the date this Act comes into force.

Savings in relation to winding up and dissolution of former Act companies

13. (1) If a former Companies Act company is, after the transition period, being wound up under Part IV of the Companies Act, the Companies Act continues to apply in relation to the winding up.

(2) Part IX of the International Business Companies Act continues to apply to the winding up and dissolution of an IBC after the repeal of the International Business Companies Act if, before the end of the transition period—

(a) articles of dissolution are registered by the Registrar pursuant to section 94(4) of the International Business Companies Act; and

(b) either the company has not been dissolved under section 94(6) of the International Business Companies Act or the articles of dissolution have not been rescinded under section 95 of that Act.

(3) Part VIII of the Limited Liability Company Act continues to apply to an LLC if, immediately before the end of the transition period, the LLC has been dissolved but not struck off the LLC Register or it is in the process of being wound up under section 51 of the Limited Liability Company Act.

(4) If an application made to the Court for the winding up of a former Act company made to the Court under a former Act has not been determined at the date this Act comes into force, the application shall be treated as if it was an application for the appointment of a liquidator under this Act.

Dissolution of IBCs

14. (1) An IBC that is struck off the IBC register under section 99 of the International Business Companies Act (Cap. 11.13), before the end of the transition period, but that is not deemed to be dissolved before the end of the transition period, if it remains struck off continuously for a period of ten

years, shall be deemed to be dissolved with effect from the last day of the ten-year period.

(2) If this paragraph applies to an IBC, it applies in place of section 236.

Order declaring dissolution of former Act company void

15. (1) An application may be made to the Court for an order declaring the dissolution of a former Companies Act company or an IBC to which sub-paragraph (2) applies to be void.

(2) This paragraph applies, in place of section 238, if—

(a) in the case of a former Companies Act company, the company was struck off the former Companies Register and dissolved before the end of the transition period; or

(b) in the case of an IBC—

(i) the company was dissolved under the provisions of the International Business Companies Act (Cap. 11.13) before the end of the transition period; or

(ii) is deemed to be dissolved under paragraph 14.

(3) An application under sub-paragraph (1)—

(a) may be made by the company or a creditor, member or liquidator of the company;

(b) shall be made within ten years of the date that the company was dissolved; and

(c) may be made after the applicable re-registration date, or if the company has been struck off and dissolved before the applicable re-registration date, before that date.

(4) On an application under sub-paragraph (1), the Court may declare the dissolution of the company void, subject to such conditions as it considers just.

(5) If the Court makes an order under sub-paragraph (4)—

(a) the company is deemed never to have been struck off the former Companies Register or the IBC Register, as the case may be, or to have been dissolved; and

(b) if the order is made on or after the applicable re-registration date, the company is deemed to have been re-registered under paragraph 4(1).

(6) If the Court makes an order under this paragraph, the person who applied for the order must file a sealed copy of the order and, on receipt, the Registrar shall issue a certificate of restoration and re-registration to the company in the approved form and the restoration has effect from the date of the Court order or such other date as may be specified in the order.

Re-registration of struck off IBC

16. (1) An application may be made to the Registrar after the end of the transition period to re-register an IBC that was struck off the IBC Register before the end of the transition period but that—

(a) was not dissolved before the end of the transition; or

(b) is not deemed to be dissolved under paragraph 13 on the date of the application.

(2) An application under paragraph 15(1) may be made by the IBC or a creditor, member or liquidator of the IBC.

(3) On receipt of an application under paragraph 15(1), the Registrar may re-register the IBC and issue a certificate of re-registration if he is satisfied that—

(a) a licensed person has agreed to act as the registered agent of the IBC on its re-registration; and

(b) it would be fair and reasonable for the IBC to be re-registered.

(4) If the Registrar re-registers an IBC under paragraph 15(3), the IBC is deemed—

(a) never to have been struck off the IBC Register;

(b) to be restored to the IBC Register at the end of the transition period; and

(c) to have been re-registered under this Act at the end of the transition period in accordance with paragraph 4.

(5) If an IBC is restored and re-registered under this paragraph, paragraphs 5, 7, 8 and 9 apply, except that the time periods specified in paragraph 7(3) and (8) commence on the date that the Registrar re-registers the IBC and not the end of the transition period.

Struck off company liable for fees and penalties

17. (1) An IBC that is struck off the IBC Register shall remain liable for—

(a) all fees and penalties due under the International Business Companies Act; and

(b) such fees and penalties that would have been payable under this Act had the company been deemed to be re-registered under paragraph 4(1).

(2) The Court shall not make an order declaring the dissolution of an IBC void under paragraph 14, and the Registrar shall not re-register an IBC under paragraph 15, unless the following have been paid to the Registrar—

(a) all fees and penalties for which the company is liable under paragraph 16(1); and

(b) the prescribed restoration fee.

(3) The Court shall not make an order declaring the dissolution of a former Companies Act company void under paragraph 14 unless the following have been paid to the Registrar—

(a) all fees and penalties which the company would have been liable to pay under the Companies Act had it not been dissolved, during the period from the date that it was dissolved to the end of the transition period together with any fees and penalties outstanding at the date of its dissolution;

(b) such fees and penalties that would have been payable under this Act had the company been re-registered under paragraph 4(1); and

(c) the prescribed restoration fee.

Sections of this Act having effect

18. (1) Sections 237 and 240 of this Act apply to, and with respect to, an IBC that, at the end of the transition period, is struck off the IBC Register.

(2) Sections 241 and 242 of this Act apply to, and with respect to an IBC and its property if the company is struck off the IBC Register, as the case may be, before the end of the transition period but is dissolved in accordance with paragraph 13 on or after the end of the transition period.

(3) Any reference in section 237, 241 or 242 of this Act to "the Register" shall be taken as a reference to the IBC Register.

Effect of re-registration under this Act

19. (1) A former Act company that is re-registered under this Act, whether on application under paragraph 3 or under paragraph 4(1), continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not—

(a) prejudice or affect its identity;

(b) affect its assets, rights or obligations; or

(c) affect the commencement or continuation of proceedings by or against the company.

(2) A former Act company that is re-registered under this Schedule shall be subject to this Act except to the extent specified in this Schedule, to the extent that this Schedule is applicable to the company.

Seals of re-registered companies

20. If, immediately before its re-registration under this Schedule, a former Act company has a common seal, that common seal shall, for all purposes, be considered to be a valid common seal for the purposes of this Act.

External companies

21. An external company registered under Part 3, Division B of the Companies Act at the end of the transition period is deemed to be re-registered as a foreign company under Part 12 of this Act.

Registrar and Deputy and Assistant Registrars of Companies

22. The person holding office as Registrar of Companies or Deputy Registrar of Companies under the Companies Act, immediately before the date this Act comes into force, is deemed to have been appointed as Registrar of Companies or as Deputy Registrar of Companies in accordance with section 371(1) on the same terms as they were appointed under that Act.

References to companies in other enactments

23. A reference in any enactment to a company incorporated, continued or registered under a former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated, continued or re-registered under this Act.

PERSONS WITH SIGNIFICANT CONTROL (REGISTRATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART 4

PROTECTION FROM DISCLOSURE

PART 5

MISCELLANEOUS

PERSONS WITH SIGNIFICANT CONTROL (REGISTRATION) REGULATIONS – SECTION 382

(S.R.O. 15/2024)

Commencement

[22 March 2024]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Persons with Significant Control (Registration) Regulations.

Interpretation

2. (1) In these Regulations—

"Act" means the Companies Act, 2023;

"arrangement" is to be construed in accordance with subregulation (2);

"constitution" means—

(a) in the case of a company, its articles; and

(b) in the case of any other legal entity, the documents that constitute and govern the legal entity;

"designated credit bureau" has the meaning specified in regulation 4;

"Eastern Caribbean Currency Union" refers collectively to the countries that use the Eastern Caribbean currency as their official currency;

"foreign limited partner" has the meaning specified in regulation 3;

"joint arrangement" means an arrangement between the holders of shares or rights in a company that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement;

"legal entity" means a body corporate or a firm that is a legal person under the law by which it is governed and includes a company;

"majority interest" has the meaning specified in regulation 7(2);

"relevant legal entity", in relation to a company (the first company), means another company or a foreign listed company that, if an individual, would be a person with significant control over the first company;

"voting rights" is to be construed in accordance with regulation 11.

(2) Subject to subregulation (3), an arrangement includes—

(a) any scheme, agreement or understanding, whether or not it is legally enforceable; and

(b) any convention, custom or practice of any kind.

(3) A scheme, agreement, understanding, convention, custom or practice is not considered to be an arrangement unless there is at least some degree of stability about it, whether by its nature or terms, the time it has been in existence or otherwise.

Meaning of "foreign limited partner"

3. (1) A **"foreign limited partner"** is an individual who—

(a) participates in a foreign limited partnership as a limited liability participant; or

(b) directly or indirectly, holds shares or a right in or in relation to a legal entity which participates in a foreign limited partnership as a limited liability participant.

(2) In this regulation—

(a) a **"foreign limited partnership"** is an arrangement which—

(i) is established under the law of a country outside Montserrat;

(ii) consists of at least one person who has unlimited liability for the debts and obligations of the arrangement; and

(iii) consists of at least one person who has no, or limited, liability for the debts and obligations of the arrangement for so long as that person does not take part in the management of the arrangement's business; and

(b) a **"limited liability participant"** is a person who—

(i) has no, or limited, liability for the debts and obligations of the foreign limited partnership for so long as that person does not take part in the management of the foreign limited partnership's business; and

(ii) does not take part in the management of the foreign limited partnership's business.

Meaning of "designated credit bureau"

4. For the purposes of these Regulations, a **"designated credit bureau"** is an entity that—

(a) holds a licence to carry on the activities of a credit bureau in the Eastern Caribbean Currency Union; and

(b) has filed with the Registrar a written statement that it intends to use any protected PSC information that is disclosed to it only for a purpose permitted by the enactment under which it is licensed.

PART 2

PROVISIONS FOR INTERPRETING DIVISION 2 OF PART 5 OF THE ACT

Scope of Division 2 of Part 5 of the Act

5. For the purposes of section 85 of the Act, a listed company is exempt from the following provisions of the Act—

(a) section 88;

(b) section 89

(c) section 90;

(d) section 91; and

(e) section 95.

Persons or bodies treated as individuals

6. The following are to be treated as individuals for the purposes of section 86(3) of the Act—

(a) a corporation sole;

(b) a government or a government department of a country;

(c) a local authority or local government body in a country; and

(d) an international organisation, the members of which include two or more countries or their governments.

Holding an interest and a majority interest

7. (1) A person holds an interest in a company if the person—

(a) holds, directly or indirectly, shares in the company;

(b) holds, directly or indirectly, voting rights in the company;

(c) holds, directly or indirectly, the right to appoint or remove any member of the board of directors of the company;

(d) has the right to exercise, or actually exercises, significant influence or control over the company; or

(e) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a partnership that, under the law by which it is governed, is not a corporate body, or the trustees of a trust, hold an interest in the company and subregulation (1)*(a)*, *(b)*, *(c)* or *(d)* apply to the—

(i) members of the partnership; or

(ii) trustees of the trust,

in the capacity of members of the partnership or trustees.

(2) A person has a majority interest in a legal entity if the person—

(a) holds a majority of the voting rights in the legal entity;

(b) is a member of a legal entity and has the right to appoint or remove a majority of the directors of the legal entity;

(c) is a member of a legal entity and controls alone, pursuant to a joint agreement with other members, a majority of the voting rights in the legal entity; or

(d) has the right to exercise, or actually exercises, dominant influence or control over the legal entity.

Interests held through a legal entity

8. (1) A person holds an interest in a company through a legal entity if the person—

(a) holds the interest by virtue of indirectly holding shares or a right; and

(b) the interest is held by virtue of having a majority interest in a legal entity—

(i) which holds the shares or right directly; or

(ii) that is part of a chain of legal entities that includes the legal entity which holds the shares or right directly.

(2) If subregulation (1)*(b)*(ii) applies, the person holds the interest in the company through each legal entity in the chain.

Joint interests and arrangements

9. (1) If two or more persons each hold a share or right jointly, each of them is treated as holding that share or right.

(2) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

Calculating shareholdings

10. A person holds shares exceeding 25% of the issued shares in a company if the number of shares that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company.

Voting rights

11. (1) A reference to the voting rights in a company is to the rights, including rights that arise only in certain circumstances, conferred on a shareholder or other member of the company to vote on members' resolutions on all, or substantially all, matters.

(2) In relation to any matters that are not decided by members' resolution, a reference to exercising—

(a) voting rights in the company is to be read as a reference to exercising rights in relation to the company that are equivalent to those of a member entitled to vote on a members' resolution; and

(b) more than 25% of the voting rights in the company is to be read as a reference to exercising the right under the constitution of the company, or a members' agreement, to block changes to the overall policy of the company or to the terms of its constitution.

(3) In applying these Regulations, the voting rights in a company are to be reduced by any rights held by the company itself.

Rights to appoint or remove directors

12. A reference to the right to appoint or remove a majority of the directors of a company is to the right to appoint or remove directors holding a majority of the voting rights in respect of directors' resolutions on all or substantially all matters.

Holding a share or right indirectly

13. (1) A person holds a share indirectly if the person has a majority interest in a legal entity, and the legal entity—

(a) holds the share in question; or

(b) is part of a chain of legal entities—

(i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain; and

(ii) the last of which in the chain holds the share.

(2) A person holds a right indirectly if the person has a majority interest in a legal entity and that legal entity—

(a) holds that right; or

(b) is part of a chain of legal entities—

(i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain; and

(ii) the last of which holds that right.

(3) In the application of this regulation to the right to appoint or remove a majority of the directors, a legal entity is to be treated as having the right to appoint a director if—

(a) a person's appointment as director follows necessarily from that person's appointment as director of the legal entity; or

(b) the directorship is held by the legal entity itself.

Shares held by nominees

14. A share held by a person as nominee for another person is to be treated for the purposes of the Act and these Regulations as held by the other person, and not by the nominee.

Rights treated as held by person who controls their exercise

15. (1) Where a person controls a right, the right is to be treated for the purposes of the Act and these Regulations as held by that person, and not by the person who in fact holds the right, unless that person also controls it.

(2) A person controls a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

(a) by that person;

(b) in accordance with that person's directions or instructions; or

(c) with that person's consent or concurrence.

Rights exercisable only in certain circumstances

16. (1) Rights that are exercisable only in certain circumstances are to be taken into account only when the circumstances—

(a) have arisen, and for so long as they continue to subsist; or

(b) are within the control of the person having the rights.

(2) Despite subregulation (1), rights that are exercisable by a third party or by creditors while a legal entity is in relevant insolvency proceedings shall not be taken into account, even while the company is in those proceedings.

(3) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

(4) In this regulation, **"relevant insolvency proceedings"** means proceedings under the insolvency law of any country outside Montserrat during which a legal entity's assets and affairs are subject to the control or supervision of a third party or creditor.

Rights attached to shares held by way of security

17. Rights attached to shares held by way of security provided by a person are to be treated for the purposes of these Regulations as held by that person where—

(a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions; and

(b) the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

Significant influence or control

18. (1) Without limiting section 86(2)*(d)* of the Act, a person is considered to have the legal right to exercise significant influence or control over a company if, the person is a member of the company, but not a shareholder, and the person holds a right to share in more than 25% of the capital or, as the case may be, profits of the company.

(2) The Commission may issue guidance under section 384 of the Act concerning the meaning of **"significant influence or control"** for the purposes of section 86 of the Act and regard must be had to any guidance issued in accordance with this regulation in interpreting references in the Act or these Regulations to **"significant influence or control"**.

Persons considered not to exercise significant influence or control

19. (1) A person does not exercise significant influence or control over a company merely because the person—

(a) provides advice or direction in a professional capacity to the company, including by acting as—

(i) a lawyer;

(ii) an accountant;

(iii) a financial advisor; or

(iv) an investment manager;

(b) deals with the company under a third party commercial or financial agreement;

(c) has the benefit of a security interest over shares or voting rights in a company;

(d) has commercial exposure to the financial performance of a company through a financial derivative or other similar contractual arrangement;

(e) is an employee acting in the course of the employee's employment and as nominee for the employer, including an employee, director or chief executive officer of a third party which has significant influence or control over the company;

(f) is a director of the company, including as a managing director, a sole director and a non-executive director; or

(g) exercises a function under an enactment, including as the liquidator or receiver of a company.

(2) Subregulation (1) does not set out an exhaustive list of circumstances in which a person does not exercise significant influence or control over a company.

Foreign limited partnerships

20. (1) An individual does not meet the conditions for being a person with significant control over a company specified in section 86(2)*(a)*, *(b)* or *(c)* of the Act merely because the person—

(a) is a foreign limited partner; or

(b) directly or indirectly holds shares or holds rights, in or in relation to a foreign limited partner which, in its capacity as such, would meet the condition if it were an individual.

(2) Subregulation (1) does not apply for the purposes of determining whether the requirement specified in section 86(2)*(e)* of the Act is met.

Registrable persons

21. (1) For the purposes of section 87 of the Act, a person who has significant control over a relevant company or who is a relevant legal entity in relation to the company is not a registrable person with respect to the company if subregulation (2) applies to the person.

(2) This subregulation applies if the person concerned does not hold an interest in the relevant company except through one or more legal entities over each of which the person has significant control, and with respect to any share or right in the relevant company that the individual holds indirectly by virtue of having a majority interest in a legal entity, the legal entity—

(a) holds the shares or right directly and is a relevant legal entity in relation to the company; and

(b) is part of a chain of legal entities—

(i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain and the last of which in the chain holds the share; and

(ii) at least one of the legal entities is also a relevant legal entity in relation to the company.

PART 3

PSC INFORMATION AND VERIFICATION OF IDENTITY

Prescribed PSC information

22. (1) The prescribed PSC information with respect to an individual who is a registrable person comprises—

(a) the individual's—

(i) full legal name and any former names;

(ii) date of birth;

(iii) place of birth;

(iv) nationality;

(v) country of usual residence; and

(vi) usual residential address;

(b) an address for service of notices under the Act or these Regulations;

(c) information identifying the individual from the individual's passport, driver's licence or other government-issued document, including the—

(i) identifying number;

(ii) country of issue; and

(iii) date of issue and of expiry;

(d) the date on which the individual became, or ceased to be a registrable person, in relation to the relevant company in question; and

(e) the nature of the individual's control over the relevant company.

(2) The prescribed PSC information with respect to a person or body to be treated as an individual, as specified in regulation 6 that is a registrable person comprises—

(a) the full legal name and any former names of the person or body;

(b) the address of the principal or registered office of the person or body;

(c) the legal form of the person or body and the law by which it is governed;

(d) the country of—

(i) incorporation, formation or constitution, in the case of a corporation sole;

(ii) a person or a body that is a government, government department, local authority or local government body; or

(iii) usual or main residence of a person or body that is an international organisation;

(e) if applicable, details of the register of companies, or equivalent register, maintained in a country outside Montserrat in which the person or body is registered and its registration number in that register;

(f) the date on which the person or body became, or ceased to be a registrable person, in relation to the relevant company in question; and

(g) the nature of the control that the person or body has over the relevant company.

(3) The PSC information with respect to a company or a foreign listed company comprises—

(a) the full name of the company or foreign listed company;

(b) in the case of a company, its company number and the date of its incorporation, continuation, consolidation or re-registration under the Act;

(c) in the case of a foreign listed company—

(i) the country in which it is incorporated, formed or otherwise constituted;

(ii) its legal form and the law under which it is incorporated or formed;

(iii) the date on which it was incorporated, formed or otherwise constituted; and

(iv) its registration number, if applicable;

(d) in the case of a listed company or a foreign listed company, the exchange on which the company's shares are listed;

(e) the registered office of the company or foreign listed company;

(f) the date on which the company or foreign listed company became or ceased to be a registrable person in relation to the company in question; and

(g) the nature of the control that the company or foreign listed company has over the relevant company.

(4) A person who was a registrable person in relation to a company on the company's incorporation or continuation under the Act is considered to have become a registrable person on the date that the company was incorporated or continued, as the case may be.

Verification of identity

23. (1) For the purposes of the definition of **"PSC verification evidence"** in section 2(1) of the Act—

(a) the PSC information that is required to be verified with respect to a registrable person is the person's identity; and

(b) a person's identity shall be verified using documentation, data or information that is obtained from a reliable source that is acceptable to the Commission.

(2) The Commission shall issue guidance specifying types or descriptions of documentation, data or information that are acceptable to the Commission for the purposes of verifying the identity of a registrable person.

Notice in relation to change in PSC information

24. (1) A notice given by a relevant company under section 89 of the Act shall require the addressee—

(a) to confirm whether or not the change specified in the notice has occurred; and

(b) if the change under paragraph *(a)* has occurred—

(i) state the date of the change; and

(ii) confirm or correct the information included in the notice and supply any PSC information that is missing from the notice.

(2) A notice referred to in subregulation (1) shall state that the addressee must comply with the notice by no later than the end of the period of four weeks of receipt of the notice.

Inaccurate PSC information filed

25. (1) If a relevant company becomes aware of an inaccuracy in any PSC information that it has filed, it shall file a notice correcting the inaccuracy within fourteen days of discovering the inaccuracy.

(2) A relevant company that contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of $50,000.

Retention of information on PSC Register

26. The Registrar shall retain information recorded on the PSC Register in relation to a company for a period of twenty years after the dissolution of the company.

PART 4

PROTECTION FROM DISCLOSURE

Protected PSC information

27. (1) A person inspecting the PSC Register is entitled to access the following PSC information concerning a registrable person who is an individual—

(a) the individual's full name;

(b) the individual's month and year of birth;

(c) the individual's nationality and usual country of residence;

(d) the date on which the individual became or ceased to be a registrable person in relation to the relevant company; and

(e) the nature of the individual's control over the relevant company.

(2) A person inspecting the PSC Register is entitled to access all the PSC information filed in relation to a registrable person who is—

(a) a person or body to be treated as an individual, as specified in regulation 6; or

(b) a company or a foreign listed company.

(3) PSC information not specified in subregulation (1) is protected PSC information.

Company not to use or disclose protected PSC information

28. (1) A company shall not use or disclose protected PSC information about any individual who is a registrable person in relation to the company except—

(a) for communicating with the person concerned;

(b) in order to comply with any requirement of the Act or these Regulations to provide information to the Registrar or the Commission;

(c) in order to comply with an obligation under any other enactment;

(d) where required to do so by an order of a court of competent jurisdiction in Montserrat.

(2) A company that contravenes subregulation (1), commits an offence and is liable on summary conviction to a fine of $50,000.

Request by Financial Intelligence Unit for disclosure of confidential PSC information

29. A request by the Financial Intelligence Unit for the disclosure of PSC information that is confidential information under section 97(3) of the Act is made in accordance with these Regulations if made in the approved form.

Designated credit bureaus

30. (1) The Registrar may enter into a memorandum of association or agreement with a designated credit bureau for the provision of protected PSC information to the credit bureau.

(2) A designated credit bureau that has entered into a memorandum of association or agreement with the Registrar under subregulation (1) is a person to whom a disclosure of protected PSC information may be made under section 97(3)*(c)* of the Act.

(3) A request by a designated credit bureau under section 98 of the Act for the disclosure of PSC information in relation to a company is made in accordance with these Regulations if made in accordance with the memorandum of understanding or agreement entered into in accordance with subregulation (1).

Application for non-disclosure of PSC protected residential address information

31. (1) Application may be made to the Commission for a determination that PSC information specified in the application relating to the person should not be disclosed to members of the public or to a designated credit bureau on the grounds that—

(a) the registrable person is a minor or lacks legal capacity; or

(b) the access to the information would expose the registrable person or a person who lives with the registrable person to the serious risk of—

(i) fraud;

(ii) kidnapping;

(iii) blackmail;

(iv) extortion;

(v) harassment;

(vi) violence;

(vii) intimidation; or

(viii) other similar harm.

(2) An application under subsection (1) may be made by—

(a) an individual who is, or proposes to become a registrable person, in relation to a company; or

(b) with the consent of an individual specified in paragraph *(a)*, by a company in relation to which the individual is, or proposes to become a registrable person.

(3) A person who makes an application under subsection (1) must inform the Commission in writing without delay upon becoming aware of any change to any information or evidence provided to the Commission in connection with the application.

Determination of application by Commission

32. (1) The Commission shall not grant an application under regulation 30(1)*(b)* unless it is satisfied that there are reasonable grounds for believing that the individual person concerned would be at serious risk of one or more of the harms specified in regulation 30(1)*(b)* if the PSC information is disclosed.

(2) For the purpose of determining an application under subregulation (1), the Commission may—

(a) request the applicant to provide further information or evidence; or

(b) refer any question relating to an assessment of the nature or extent of any risk of violence or intimidation to a relevant body or to any other person the Commission considers may be able to assist in making the assessment.

(3) The Commission may determine that the individual's full name should be subject to disclosure but that one or more other types of PSC information should not be subject to disclosure.

(4) The Commission shall determine an application for non-disclosure under subregulation (1) and, within seven days beginning with the date that the determination is made, send notice of the determination to the—

(a) individual who made the application; or

(b) company that made the application on the individual's behalf.

(5) If the application for non-disclosure is not granted the Commission shall, in the determination notice—

(a) give reasons for the refusal to grant the application;

(b) inform the individual or company of their right to apply for permission to appeal against the determination within the period specified in regulation 34.

Duration of determination

33. (1) A determination made under regulation 32 that an application is successful has effect until—

(a) either—

(i) the person to whom the determination relates; or

(ii) that person's personal representative,

notifies the Registrar in writing that he or she wishes the determination to cease to have effect; or

(b) the Commission revokes the determination under regulation 33 and the period for appealing the Registrar's revocation of the determination has not passed.

(2) If the applicant appeals the Commission's revocation of the determination, the determination granting an application for non-disclosure continues to have effect until the appeal has been withdrawn or determined by the Court.

Revocation of determination

34. (1) The Commission may revoke a determination made under regulation 31 if there are reasonable grounds for believing that the grounds for the application are not established or are no longer established.

(2) Before revoking a determination under this regulation, the Commission shall send a notice to the applicant in relation to the determination and, if different, the person to whom the determination relates stating—

(a) the Commission's intention to revoke the determination and the grounds for the intended revocation;

(b) that the addressee may, within twenty-eight days beginning with the date of the notice, provide written representations to the Commission as to why it should not revoke the determination; and

(c) that if the Commission receives representations within that period, the Commission will have regard to them in deciding whether to revoke the determination.

(3) After the expiration of the time specified in the notice, unless the addressee of the notice has shown cause to the contrary, the Commission may revoke the determination.

(4) The Commission shall send notice of its decision as to whether to revoke a determination to the applicant in relation to the determination and, if different, the person to whom the determination relates within seven days beginning with the date of the decision.

Appeal against determination of Commission

35. (1) If the Commission rejects an application for non-disclosure or revokes a determination under regulation 33, the applicant may, within twenty-eight days of the date of rejection or revocation notice, appeal to the Court on the grounds that the determination is—

(a) unlawful or irrational; or

(b) in the circumstances, unreasonable or unjust to the applicant or, in the case of an application by a company, to the individual to whom the PSC information relates.

(2) The Court shall not extend the time for appeal unless it is satisfied that there was good reason for the failure of the applicant to appeal within the twenty-eight day period.

(3) An applicant who appeals the Commission's determination or revocation shall serve notice of the appeal on the Commission within seven days of lodging the appeal with the Court and the Commission is entitled to attend and be heard at the hearing of the appeal.

(4) On the hearing of an appeal under this regulation, the Court may—

(a) dismiss the appeal; or

(b) set the Commission's determination or decision to revoke its determination aside.

(5) If the Court sets the Commission's determination or decision to revoke aside, it may refer the matter back to the Commission with a direction to reconsider it and make a determination or decision in accordance with the directions of the Court.

Non-disclosure by Registrar

36. (1) If the Commission makes a non-disclosure determination with respect to specified PSC information relating to a registrable person that it has not revoked, the Commission shall not disclose that PSC information to a member of the public or to a designated credit bureau, as the case may be.

(2) The Commission shall not disclose—

(a) that an application has been made under regulation 30;

(b) any documents provided in support of the application;

(c) that a determination notice has been issued or the contents of the determination notice; or

(d) any evidence or information provided under regulation 31.

PART 5

MISCELLANEOUS

Fees

37. The following fees are payable to the Registrar—

(a) for each inspection of the PSC Register, $50 for each company inspected; and

(b) for the issue by the Registrar of an extract or copy of any entry in the PSC Register, $100.

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COMPANIES REGULATIONS

ARRANGEMENT OF REGULATIONS

COMPANIES REGULATIONS – SECTION 382

(S.R.O. 16/2024)

Commencement

[22 March 2024]

PART 1

PRELIMINARY

Short title

1. These Regulations may be cited as the Companies Regulations.

Interpretation

2. (1) In these Regulations—

"Act" means the Companies Act;

"business day" means any day other than a Saturday, Sunday or public holiday under the Public Holidays Act (Cap. 6.09);

"Civil Procedure Rules" means the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023, made under section 17 of the Supreme Court Order (S.I. 1967 No. 223);

"close family member" has the meaning specified in subregulation (2);

"Electronic Registration System" means the electronic system established by the Registrar for—

(a) keeping in electronic form—

(i) the Registers maintained by the Registrar under the Act; and

(ii) documents filed under the Act or these Regulations and the information contained in the documents; and

(b) enabling the electronic filing and retrieval of documents and information;

"form of proxy" means a written or printed form that, on completion and signature by or on behalf of a member, becomes a proxy;

"proposal" means a notice given by a member of a company to the board in accordance with regulation 16(1);

"proxy" means a completed and signed form of proxy by means of which a member appoints a proxy holder to attend and act on his behalf at a meeting of members;

"voluntary liquidation" has the meaning specified in subregulation (3).

(2) A person's close family members are the person's—

(a) spouse;

(b) child, including a stepchild and an adopted child;

(c) parent, including a stepparent and an adoptive parent;

(d) brother or sister, including a stepbrother or sister and an adoptive brother or sister; or

(e) grandchild.

(3) A company is in voluntary liquidation for the purposes of the Act and these Regulations if a liquidator of the company has been appointed by the members under section 258 of the Act.

PART 2

COMPANY ADMINISTRATION AND GOVERNANCE

Articles

Articles of incorporation

3. The articles of a non-profit company shall state that the company is not authorised to carry on its activities outside Montserrat otherwise than in furtherance of its activities within Montserrat.

Registers and records

Register of members

4. (1) The register of members of a company limited by shares shall, in addition to the information specified in section 64(1) of the Act—

(a) set out either—

(i) the voting rights attached to, or associated with, each class of shares held by a member; or

(ii) that a class of shares held by a member carries no voting rights;

(b) state whether a shareholder is a nominee shareholder and, with respect to each nominee shareholder, set out the name and address of the person for whom the shareholder is a nominee; and

(c) in the case of a guarantee member, state the amount which the member is liable to contribute to the company's assets in the event that the company is wound up whilst the person is a member.

(2) Information relating to a former member of a company may be deleted from the register of members twenty years following the date that the person ceased to be a member.

Register of directors

5. (1) In the case of a director who is an individual, the register of directors shall set out the director's—

(a) full legal name and any former names;

(b) date of birth;

(c) nationality; and

(d) usual residential address and, if different, an address for service.

(2) In the case of a director that is a body corporate, the register of directors shall set out the director's—

(a) full corporate name;

(b) registered office or, if it does not have a registered office, its principal place of business;

(c) legal form and the jurisdiction by which it is governed; and

(d) date of incorporation or formation.

(3) For the purposes of section 148 of the Act and this regulation, **"director"** includes an alternate director and, in the case of a person who is an alternate director, the register shall state that the person is an alternate director.

Retention of records

6. (1) A company shall keep—

(a) its articles, register of members, register of directors, and register of charges until it is dissolved;

(b) minutes of meetings and resolutions required to be kept under section 101 of the Act, for a period of seven years after the date of the resolution or meeting.

(2) If a company is dissolved, the records specified in subregulation (1) shall be kept for a period of five years following the date of the company's dissolution—

(a) if the company was dissolved following the termination of its liquidation, by the liquidator of the company; or

(b) in any other case, by the person who was the last registered agent of the company.

(3) This regulation applies to records kept in paper and electronic form.

(4) A company that fails to comply with subregulation (1) or a person who fails to comply with subsection (2), commits an offence and is liable on summary conviction to a fine of $10,000.

Written resolutions and meetings of members

Notice to be given of written resolutions

7. (1) If a written resolution is passed under section 73 of the Act, the company shall, within five business days of the resolution being passed, send a copy of the resolution to every member of the company who did not sign the resolution.

(2) A resolution may be signed under subregulation (1) without any prior notice being given to members.

(3) A company that fails to comply with subregulation (1), commits an offence and is liable on summary conviction to a fine of $10,000.

Meeting requested by members

8. (1) A request by members of a company to the directors to call a meeting under section 68(3) of the Act—

(a) shall state the general nature of the business to be dealt with at the meeting; and

(b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(2) The directors of a company shall call a meeting of members—

(a) within twenty-one days from the date on which they receive a request from members that complies with section 68(3) of the Act; and

(b) to be held on a date not more than twenty-eight days after the date of the notice calling the meeting.

Notice calling meeting of members

9. (1) A notice calling a meeting of members shall state—

(a) the place, date and time of the meeting;

(b) the general nature of the business to be conducted at the meeting in sufficient detail to enable a member to form a reasoned judgment in relation to it; and

(c) the text of any special resolution to be submitted to the meeting.

(2) Subject to the articles, if a meeting of members of a company is adjourned for less than thirty days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Quorum for meetings

10. (1) Subject to the articles of a company, for the purposes of section 70 of the Act, if a quorum is not present within thirty minutes after the time appointed for the meeting—

(a) in the case of a meeting called under section 68(3) of the Act, the meeting is dissolved; and

(b) in the case of any other meeting, the meeting is adjourned to the date, time, and place fixed by the directors or, if the directors do not fix a date, time, and place for the adjourned meeting, to the same day in the following week at the same time and place.

(2) Subject to the articles of a company, if, at the adjourned meeting, a quorum is not present within thirty minutes after the time appointed for the meeting, the members or their proxy holders present are a quorum.

Voting

11. (1) Subject to the articles of a company, if a meeting is held between members who are all present at the meeting in person, unless a poll is demanded, voting at the meeting shall be by—

(a) voting by show of hands; or

(b) such other method as may be determined by the chair of the meeting.

(2) If some or all of the members of a company are deemed present at a meeting in accordance with section 68(5) of the Act, unless a poll is demanded, voting at the meeting shall be by any method permitted by the chair of the meeting.

(3) A declaration by the chair of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with regulation 12.

Voting by poll

12. (1) Subject to the articles of a company, a poll may be demanded at a meeting of members by—

(a) not less than five members having the right to vote at the meeting;

(b) a member or members representing not less than 10% of the total voting rights of all members having the right to vote at the meeting; or

(c) the chair of the meeting.

(2) A poll may be demanded either before or after the vote is taken on a resolution.

(3) If a poll is taken, votes must be counted according to the voting rights of each member present in person or by proxy holder and voting.

(4) Subject to the articles of the company, the chair of a members' meeting is not entitled to a casting vote.

(5) For the purposes of this regulation, the instrument appointing a proxy holder to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy holder for a member has the same effect as a demand by the member.

Proxies

13. (1) A proxy holder appointed to represent a member of a company at a meeting of members shall be appointed by notice in writing signed by or, in the case of an

electronic notice, sent by the member and the notice must state whether the appointment is for a particular meeting or a specified term.

(2) A proxy is not effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

(3) The articles of a company may provide that a proxy is not effective unless it is produced by a specified time before the start of a meeting, provided that the time specified is not earlier than forty-eight hours before the start of the meeting.

(4) For the purposes of subregulation (3), the articles may provide for different matters for different kinds of proxies, including a different specified time for the production of a proxy by electronic means.

Postal votes

14. (1) Subject to the articles of the company, a member may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this regulation.

(2) For the purposes of this regulation, "postal vote" includes a vote cast using electronic means permitted by the directors.

(3) The notice of a meeting at which members are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.

(4) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

(5) A member may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the member's votes are to be cast to a person authorised to receive and count postal votes at that meeting.

(6) A notice under subregulation (5) must reach that person not less than forty-eight hours before the start of the meeting.

(7) Despite subregulation (6)—

(a) the articles of a company may specify a time by which postal votes that are cast using electronic means must reach the person who is authorised to receive and count postal votes at the meeting; and

(b) that time may be less than forty-eight hours before the start of the meeting.

(8) A person authorised to receive and count postal votes at a meeting shall—

(a) collect together all the postal votes received by the person or by the company;

(b) in relation to each resolution to be voted on at the meeting, count—

(i) the number of members voting in favour of the resolution and the number of votes cast by each member in favour of the resolution; and

(ii) the number of members voting against the resolution, and the number of votes cast by each member against the resolution;

(c) sign a certificate that the person has carried out the duties set out in paragraphs *(a)* and *(b)* and which sets out the results of the counts required by paragraph *(b)*; and

(d) ensure that the certificate required by paragraph *(c)* is presented to the chair of the meeting.

(9) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chair of the meeting must—

(a) on a vote by show of hands, count each member who has submitted a postal vote for, or against, the resolution;

(b) on a poll, count the votes cast by each member who has submitted a postal vote for, or against, the resolution.

(10) The chair of a meeting must call for a poll on a resolution on which he holds sufficient postal votes that he believes that if a poll is taken the result may differ from that obtained on a show of hands.

(11) The chair of a meeting must ensure that a certificate of postal votes held by him is annexed to the minutes of the meeting.

Minutes

15. (1) The directors shall ensure that minutes are kept of all proceedings at meetings of members.

(2) Minutes which have been signed correct by the chair of the meeting are *prima facie* evidence of the proceedings.

Proposals of members

16. (1) A member of a company may give written notice to the board of a matter the member proposes to raise for discussion or resolution at the next meeting of members at which the member is entitled to vote.

(2) Subject to subregulation (3), if the proposal is received by the board not less than five days before the last day on which notice of the relevant meeting of members is required to be given, the board shall give notice of the proposal, including the text of any proposed resolution, to all members entitled to receive notice of the meeting.

(3) If the proposal is received by the board less than fourteen days before the last day on which notice of the relevant meeting of members is required to be given, the board may, as a condition of giving notice of the proposal to members, require the member making the proposal to pay the expenses of giving notice of the proposal.

(4) If the proposal is received by the board less than five working days before the last day on which notice of the relevant meeting of members is required to be given, the board shall, if practicable, and at the expense of the member, give notice of the proposal, including the text of any proposed resolution, to all members entitled to receive notice of the meeting.

(5) If the directors intend that members may vote on the proposal by proxy or by postal vote, they must give the proposing member the right to include in or with the notice given by the board, a statement prepared by the proposing member in support of the proposal, together with the name and address of the proposing member.

(6) The board is not required to include in or with the notice given by the board any part of a proposal or statement prepared by a member that the directors consider to be unlawful, defamatory, frivolous or vexatious or that the directors consider, on reasonable grounds, could give rise to any liability on the part of the company or themselves as directors.

(7) If the costs of giving notice of the proposal and the text of any proposed resolution are required to be met by the proposing member, the proposing member must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

Body corporate may act by representatives

17. A body corporate which is a member of a company may appoint a representative to attend a meeting of members on its behalf in the same manner as that in which it could appoint a proxy holder.

Loss of voting right if calls unpaid

18. Subject to the articles of a company, if a sum due to a company in respect of a share has not been paid, that share may not be voted at a members' meeting.

Other procedures at meeting of members

19. Except as provided in these Regulations, and subject to the articles, a meeting of members of a company may regulate its own procedure.

Directors

Circumstances in which director interested in a transaction

20. (1) Without limiting sections 155(1) and 156 of the Act, a director of a company is considered to be interested in a transaction with the company if the director—

(a) is a party to the transaction;

(b) will or may derive a material financial or other benefit from the transaction;

(c) has a material interest in another party to the transaction;

(d) subject to subregulation (2), is a director, officer, or trustee of another party to, or person who will or may derive a material financial or other benefit from, the transaction;

(e) is a close family member of another party to the transaction or of a person who will or may derive a material financial or other benefit from the transaction; or

(f) is otherwise directly or indirectly materially interested in the transaction.

(2) Subregulation (1)*(d)* does not apply if the other person who is a party to, or will or may derive a material financial or other benefit from, the transaction is—

(a) the company's parent, of which the company is a wholly-owned subsidiary;

(b) a wholly-owned subsidiary of the company; or

(c) a wholly-owned subsidiary of a parent of which the company is also a wholly-owned subsidiary.

PART 3

FINANCIAL REPORTING

Prescribed thresholds for large companies

21. (1) For the purposes of determining whether a company is a large company within the meaning of section 2(9) of the Act—

(a) the prescribed revenue threshold is gross revenue of $4,000,000; and

(b) the prescribed assets threshold is gross assets of $2,000,000.

(2) For the purposes of subregulation (1), the gross revenue and gross assets of a company include the gross revenue and assets of its affiliates.

Prescribed accounting standards

22. The financial statements referred to in section 106(1) of the Act and the auditor's report referred to in section 110(2)*(b)* of the Act must, except as otherwise provided by these Regulations, be prepared in accordance with standards approved by the Institute of Chartered Accountants of the Caribbean or other similar body approved by the Commission.

Financial statements

23. (1) The financial statements referred to in section 105(1)*(c)* of the Act shall include, at least—

(a) a balance sheet setting out the financial position of the company as at the last date of the financial year;

(b) a statement of the financial performance of the company in relation to the financial year, including its income and expenditure;

(c) a statement of cash flows for the company in relation to the financial year;

(d) a statement of retained earnings; and

(e) a statement of changes in financial position.

(2) The financial statements specified in subregulation (1) are not required to be designated by the names set out in subregulation 1*(a)* to *(e)*.

Exemptions

24. (1) Disclosure of information by a reporting company may be detrimental to the company in accordance with section 108(2) of the Act if, in addition to any other reason, the company would be at a disadvantage—

(a) in its dealings with suppliers, customers or others; or

(b) because it deals in only one line of products or services and—

(i) its competitors are not required to make similar disclosure; or

(ii) its competitors deal in several lines of products or services and disclose information in a form that prevents identification of financial information in respect of any particular product or service.

(2) The Registrar may, on such reasonable conditions as the Registrar considers fit, exempt a reporting company from the application of section 112(1) of the Act if—

(a) the reporting company is a subsidiary of a parent body corporate incorporated—

(i) under the laws of Montserrat;

(ii) outside Montserrat and the business of the reporting company is not economically significant in Montserrat having regard to its products or services or its share of any market;

(b) it sends to the Registrar for public disclosure a summary of its financial statements that are the subject of the application showing the amounts set out in the financial statements with respect to—

(i) current assets;

(ii) fixed assets;

(iii) other assets;

(iv) total assets;

(v) current liabilities;

(vi) long term liabilities;

(vii) total liabilities;

(viii) shareholders' equity;

(ix) investments in affiliated bodies corporate;

(x) loans and advances from affiliated bodies corporate; and

(xi) the percentage of change of gross revenue from the immediately preceding financial period; and

(c) it sends to the Registrar for public disclosure consolidated financial statements for all of its affiliates that carry on business in Montserrat.

(3) The Registrar may, on such reasonable conditions as the Registrar considers fit, exempt a reporting company from the application of section 112(1) of the Act if the company is affiliated with another body corporate by reason only that some or all of its shares are held by another person—

(a) in trust; or

(b) subject to an agreement or arrangement under which, upon the fulfilment of a condition or the happening of an event that it is reasonable to expect will be fulfilled or will happen, the affiliation with the other body corporate will terminate.

(4) The Registrar, may on such conditions as the Registrar considers fit, exempt a disclosing company from the application of section 112(1) of the Act if the company (the "controlled company") would be affiliated with another body corporate by reason of being controlled by the other body corporate or by reason of both bodies corporate being controlled by the same person (which body corporate or person so controlling the controlled company is hereinafter referred to as the "controller") and—

(a) the controlled company is a party to an agreement or arrangement under which, upon the fulfilment of a condition or the happening of an event that it is reasonable to expect will be fulfilled or will happen, the controlled company will—

(i) cease to be controlled by the controller; and

(ii) become controlled by a person with whom the controller deals at arm's length; and

(b) the principal reason for the control of the controlled company by the controller is to secure the interest of the controller in respect of—

(i) any loan made by the controller, the whole or part of which is outstanding; or

(ii) any shares issued by the controlled company that are held by the controller and that are, under the agreement or arrangement, to be redeemed by the controlled company or purchased by a person referred to in paragraph *(a)*(ii).

Application for exemption

25. (1) An application for an exemption under regulation 24 shall be in the approved form and shall be made at least sixty days before the documents in respect of which the authorisation or exemption requested are to be sent to the Registrar.

(2) Despite subregulation (1), the Registrar may, on such reasonable conditions as the Registrar considers fit, extend the time for making an application for an exemption.

Determination of application by Registrar

26. (1) The Registrar shall, within thirty days after receipt of an application for an exemption, grant the request or send the applicant written notice of his refusal together with reasons therefor.

(2) The Registrar may request that an applicant for an exemption provide him with further information or that any other person provide him with information in writing that is relevant to the application.

(3) The Registrar must provide an applicant for an exemption with a copy of any information received from any other person under subregulation (2) and shall allow the applicant a reasonable opportunity to respond in writing.

(4) If an applicant for an exemption or a person from whom the Registrar has requested information under subregulation (2) does not provide the information within the time specified by the Registrar, the Registrar may deal with the application without regard to the information.

(5) If the Registrar does not grant an exemption or send written notice of refusal within the time specified in subregulation (1), the applicant may appeal to the Court as if the Registrar had refused the exemption.

Ineligibility for appointment as auditor

27. For the purposes of section 117*(c)* of the Act, a person is ineligible for appointment as the auditor of a company if the person is a close family member of a director, officer or employee of the company or an affiliate of the company.

PART 4

COMPANY NAMES

Company number name

28. The registered name of a company may comprise the expression "Montserrat Company Number" followed by its company number in figures and the appropriate ending required by section 14 of the Act.

Requirements concerning company names

29. (1) The name of a company shall contain no more than one hundred permitted characters.

(2) A permitted character is a character specified in Schedule 1.

(3) A registered company name, other than a company number name, may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number name.

Company names in a foreign language

30. (1) Subregulation (2) applies if—

(a) an application is made to incorporate a company under, or change the name of a company to, a name that has a meaning in a language other than English;

(b) an application is made to register a foreign company under Part 12 with a corporate or alternate name that has a meaning in a language other than English; or

(c) a foreign company files a notice under section 220(1)*(a)* of the Act notifying a change of corporate name that has a meaning in a language other than English.

(2) An application or notice specified in subregulation (1) shall be accompanied by a translation of the name, alternate name or proposed name that has been certified, in accordance with regulation 162, by the person who translated the name.

Re-use of company names

31. (1) The Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to—

(a) the former name of another company or a former Act company that has changed its name under this Act or a former Act, in the circumstances specified in subregulation (2);

(b) the name of a company that has been struck off the Register or the Register maintained under a former Act for a continuous period of more than seven years and that has not been restored to the Register under that name;

(c) the name of a company or a former Act company that has been dissolved and not restored under that name;

(d) the name of a company in respect of which a certificate of discontinuance was issued under section 206 of the Act more than five years prior to the re-use of the name.

(2) The former name of a company or former Act company that has changed its name can be re-used under subregulation (1)*(a)* only if—

(a) the company or former Act company changed its name more than seven years prior to the re-use of the name; or

(b) in the case of a company, but not a former Act company, that has changed its name, the company provides its written consent, and—

(i) the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or undertaking, of the consenting company to the company seeking to re-use the name, at any time after the consenting company has changed its name;

(ii) the Registrar is satisfied that both companies are affiliates; or

(iii) in any other case, a period of three years has passed since the consenting company changed its name.

Restrictions on the re-use of company names

32. (1) The Registrar shall not permit a name to be registered to—

(a) more than two different companies; or

(b) more than twice to the same company,

in any period of seven years.

(2) The name of a company that is in liquidation under this Act or a former Act or has been dissolved following its liquidation, may only be registered to another company—

(a) if the liquidator has sold the business or undertaking, or a substantial part of the business or undertaking, of the company to the second company; or

(b) with the leave of the Court.

PART 5

LIQUIDATION

Eligible insolvency practitioners

Eligible insolvency practitioner

33. (1) Subject to subregulation (2), a person meets the prescribed criteria for an insolvency practitioner if the person is a natural person who—

(a) is in good standing as a member of the Institute of Chartered Accountants of the Caribbean; or

(b) holds an accounting or insolvency qualification approved by the Commission.

(2) A person is ineligible to act as an insolvency practitioner in relation to a company if the person is, or at any time in the previous five years has been—

(i) an officer or employee of the company; or

(ii) the auditor of the company.

Debts and claims

Preferential debts and claims

34. (1) For the purposes of section 244(1) of the Act, the claims against a company in liquidation set out in column 1 of the table below are preferential debts up to the maximum amount specified in column 2 of the table or up to an unlimited amount if specified in column 2.

(2) Preferential claims rank equally between themselves and, if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

Column 1 Nature of Claim		Column 2 Maximum amount of claim to be regarded as preferential
1.	The amount due to a person as a present or past employee of the company that represents—	
	(a) wages and salary, including commission and any amount payable by way of allowance or reimbursement, due in respect of the whole or any part of the period of six months immediately prior to the commencement of the liquidation of the company; or *(b)* accrued holiday pay in respect of any period of employment before the commencement of the liquidation of the company, whether the employee's contract of employment was terminated before or after the liquidation commenced.	
	Maximum amount for paragraphs *(a)* and *(b)* taken together.	$20,000.00
2.	Sums due to the Government in respect of any tax, duty, licence fee or permit.	$40,000.00
3.	Sums due to the Commission with respect to any fee or penalty	$20,000.00

Prescribed priority

35. The following costs and expenses of the liquidation of a company shall be paid in the order of priority in which they are listed (the "prescribed priority")—

(a) the costs and expenses properly incurred by the liquidator in preserving, realising or getting in the property of the company or in carrying on the company's business, including—

(i) the costs and expenses of any legal proceedings which the liquidator has brought or defended whether in his own name or in the name of the company; and

(ii) the costs of, and in connection with, an examination ordered under regulation 118;

(b) the remuneration of the provisional liquidator;

(c) the deposit lodged on an application for the appointment of a provisional liquidator;

(d) the costs of the application on which the liquidator was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(e) any costs allowed in respect of the preparation of a statement of affairs;

(f) the cost of, and in respect of, any creditors' committee appointed in the liquidation;

(g) any disbursements properly paid by the liquidator;

(h) the remuneration of anyone employed by the liquidator;

(i) the remuneration of the liquidator;

(j) any other fees, costs, charges or expenses properly incurred in the course of the liquidation or properly chargeable by the liquidator in carrying out his functions in the liquidation.

Claim in currency other than dollars

36. (1) The amount of a claim based on a liability incurred or payable in a currency other than dollars shall be converted into dollars at the daily indicative exchange rate published by the Eastern Caribbean Central Bank, if available for the currency concerned.

(2) In the absence of an indicative rate, as referred to in subregulation (1), the rate used shall be the closing mid-point rate published in The Financial Times (US Edition) or such other rate as may be determined by the Court.

Discounts

37. (1) Any trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement, shall be deducted from a creditor's claim.

(2) If a claim is based on a liability that, at the commencement of the liquidation, was not payable by the company until after the commencement of the liquidation, the claim shall be reduced by a percentage calculated as follows—

$$\frac{I \times M}{12}$$

where—

(a) I = 5%; and

(b) M is the number of months expressed, if need be, as or as including, fractions of a month, between the commencement of the liquidation and the date when the liability would otherwise have been due for payment.

Statutory demands

Statutory demand

38. (1) The minimum sum for which a statutory demand may be issued is $1,000.

(2) If the amount claimed in a statutory demand made against a company includes—

(a) a charge by way of interest not previously notified to the person as included in his liability; or

(b) any other charge accruing from time to time,

the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(3) If subregulation (2) applies, the amount claimed shall be limited to that amount that has accrued due at the date of the demand.

(4) A statutory demand shall include the name, address and the contact details, if any, of an individual or individuals with whom the company may communicate with a view to securing or compounding for the debt to the satisfaction of the creditor.

Service of statutory demand

39. A statutory demand shall be served on a company as a document in legal proceedings in accordance with regulation 159(1)*(a)*.

Setting aside of statutory demand

40. (1) An application to set aside a statutory demand shall be supported by an affidavit—

(a) specifying the date upon which the company was served with the statutory demand; and

(b) stating the grounds upon which it claims that the statutory demand should be set aside.

(2) A copy of the statutory demand shall be exhibited to the affidavit in support.

Appointment of liquidator by members

Appointment of liquidator by members

41. (1) The chair of a meeting of members that, by a special resolution, appoints a liquidator under section 258(1) of the Act shall, as soon as practicable, provide the liquidator with—

(a) a copy of the resolution by which he was appointed; and

(b) a certificate of the liquidator's appointment, signed by the chair.

(2) The provision to the liquidator of the documents specified in subregulation (1) is deemed notice to the liquidator for the purposes of section 260(1) of the Act.

(3) This regulation does not apply to an unregistered company.

Appointment of liquidator by the Court

Application to Court for appointment of liquidator

42. (1) A person may file an application for the appointment of a liquidator by the Court and the application shall be in compliance with subregulation (2) and supported by an affidavit in compliance with regulation 43.

(2) An application under subregulation (1) shall state—

(a) the grounds upon which the appointment is sought; and

(b) whether the applicant proposes an eligible insolvency practitioner as liquidator and, if he does, it shall—

(i) specify the name and address of the person proposed; and

(ii) state that, to the best of the applicant's knowledge and belief, the person specified is eligible to act as an insolvency practitioner in relation to the company.

(3) No application for the appointment of a liquidator may be made to the Court if the company is in liquidation, whether the liquidator was appointed by the members or by the Court.

Affidavit in support

43. (1) An application for the appointment of a liquidator shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made—

(a) by the applicant;

(b) if the applicant is a corporate body, by a director or other officer who has been concerned with the matters stated in the application;

(c) by the attorney-at-law acting for the applicant; or

(d) by a responsible person who is authorised to make the affidavit and who has the requisite knowledge of the matters sworn in the affidavit.

(4) A supporting affidavit is *prima facie* evidence of the statements in the application to which it relates.

(5) If an applicant is making applications to appoint a liquidator for more than one company, a separate affidavit shall be filed in respect of each application.

(6) If the applicant proposes an eligible insolvency practitioner as liquidator of the company, a notice of eligibility and consent to act signed by the insolvency

practitioner specified in the application shall be exhibited to the affidavit in support of an application for the appointment of a liquidator.

Service of application on company

44. (1) Unless the company is the applicant, a sealed copy of the application for the appointment of a liquidator, together with the supporting affidavit, shall be served on the company not more than fourteen days after the application has been filed.

(2) Service of the application on the company shall be verified by an affidavit of service complying with the Civil Procedure Rules.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

Copies of application to be sent to other persons

45. (1) A sealed copy of an application for the appointment of a liquidator shall be sent—

(a) to the receiver-manager, if appointed;

(b) if the company is, or at any time has been, a financial institution, to the Commission, unless the Commission is the applicant,

within the time limits specified in subregulation (2).

(2) The times limits specified for the purposes of subregulation (1) are—

(a) in the case of the receiver-manager—

(i) no earlier than the day after service of the application on the company; and

(ii) no later than four days after service of the application on the company; and

(b) in the case of the Commission, as soon as reasonably practicable after the application has been filed but, in any event, no later than 11a.m. on the day immediately after the date on which the application was filed.

Persons entitled to a copy of the application

46. An applicant for the appointment of a liquidator shall, on receiving—

(a) a request from any director, member or creditor of the company for a copy of the application; and

(b) payment of a fee of $5.00,

provide that person with a copy of the application as soon as is reasonably practicable to do so.

Advertisement of application

47. The advertisement of an application to appoint a liquidator shall state—

(a) the name of the company in respect of which the appointment is sought and the address of its registered office or, in the case of an unregistered company, the address at which the application was served;

(b) the name and address of the applicant;

(c) the date on which the application was filed;

(d) the venue fixed for the hearing of the application;

(e) the name and address of the attorney-at-law acting for the applicant; and

(f) that any person intending to appear at the hearing of the application, whether to support or oppose the application, shall give notice of his intention in accordance with regulation 48.

Notice of intention to appear

48. (1) A person who intends to appear on the hearing of an application to appoint a liquidator, other than the company itself, shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify—

(a) the name and address of the person giving notice and his contact details, if any;

(b) whether it is his intention to support or oppose the application; and

(c) if he is a creditor, the amount of his debt or if he is not a creditor, the grounds upon which he supports or opposes the application.

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 1600 hours on the business day before the date fixed for the hearing of the application, or if the hearing has been adjourned, the adjourned hearing.

(4) A person who fails to comply with this regulation may appear on the hearing of the application only with the leave of the Court.

List of appearances

49. (1) An applicant for the appointment of a liquidator shall prepare a list of the persons, if any, who have sent him a notice of intention to appear in accordance with regulation 48, specifying, in respect of each person—

(a) the person's name and address;

(b) the person's attorney-at-law, if known; and

(c) whether the person intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under regulation 48(4), the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

Affidavit in opposition

50. If a company intends to oppose an application for the appointment of a liquidator it shall, not less than seven days before the date fixed for the hearing of the application, file with the Court and serve on the applicant—

(a) a notice setting out the grounds on which it opposes the application; and

(b) an affidavit verifying the matters stated in the notice.

Leave to withdraw application

51. (1) The Court may, on the application of the person applying for the appointment of a liquidator in respect of a company, grant that person leave to withdraw the application in accordance with section 266 of the Act if it is satisfied that—

(a) the application has not been advertised;

(b) no notices of intention to appear have been received by the applicant under regulation 48; and

(c) the company consents to the application being withdrawn.

(2) An application under subregulation (1) shall be made *ex parte* at least five days before the date fixed for the hearing of the application.

Appointment of Official Receiver as liquidator

52. The Court may appoint the Official Receiver as liquidator of a company despite that—

(a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as liquidator under section 262(2) of the Act;

(b) the Official Receiver has not consented to act as liquidator; and

(c) the Official Receiver has not been given notice of the application.

Notice of order

53. The Court shall, immediately on making an order appointing a liquidator, give notice to the liquidator of his appointment and send a sealed copy of the order to him as soon as is practicable.

Application by member of company

54. (1) Except as provided in this regulation or by the Court, regulations 44 to 47 do not apply to an application for the appointment of a liquidator made by a member of the company ("a member's application").

(2) A member's application shall be made in accordance with regulation 42 and shall be supported by an affidavit complying with regulation 43.

(3) A sealed copy of the application and the affidavit in support shall be served on the company not less than fourteen days before the date fixed for the hearing of the application.

(4) A member's application shall not, except as directed by the Court, be advertised or served on any person other than the company.

(5) At the first hearing of the application, the Court shall give such directions concerning the procedures for, or in connection with, the determination of the application as it considers appropriate.

(6) Without limiting subregulation (5), the Court shall give directions concerning—

(a) service of the application on, or giving notice of the application to, persons other than the company;

(b) whether the application should be advertised and, if so, the manner of its advertisement;

(c) whether particulars of claim, defence and reply to defence are to be delivered; and

(d) the manner in which evidence is to be adduced at the hearing of the application including the matters to be dealt with in evidence.

(7) Regulations 48 to 53 apply to a member's application with such modifications as are necessary.

Application for appointment of provisional liquidator

55. (1) An application for the appointment of a provisional liquidator of a company shall propose an eligible insolvency practitioner or the Official Receiver for appointment as provisional liquidator.

(2) If proposed for appointment as provisional liquidator, the Official Receiver shall be given sufficient notice of the hearing to enable the Official Receiver to attend the hearing.

(3) An application for the appointment of a provisional liquidator shall be supported by an affidavit stating—

(a) the grounds upon which the application is being made;

(b) that the proposed appointee has consented to act and, to the best of the applicant's belief is eligible to act as provisional liquidator of the company;

(c) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed; and

(d) if the Official Receiver is proposed for appointment as provisional liquidator, whether and in what manner notice of the application has been given to the Official Receiver.

Hearing of application

56. (1) If proposed to be appointed as provisional liquidator, the Official Receiver is entitled to attend the hearing and make such representations as the Official Receiver considers appropriate.

(2) The Court shall not appoint the Official Receiver as provisional liquidator of a company unless the Official Receiver has been given notice of the application in accordance with regulation 55(2).

Order appointing provisional liquidator

57. (1) The order appointing a provisional liquidator shall specify the functions to be carried out by the provisional liquidator in relation to the company's affairs and assets.

(2) The Court shall, forthwith on making an order appointing a provisional liquidator, give notice of appointment to the provisional liquidator and, as soon as is practicable—

(a) send two sealed copies of the order to the provisional liquidator; and

(b) send one copy of the sealed order to any receiver-manager who has been appointed.

(3) The provisional liquidator shall, as soon as practicable, send one copy of the sealed order to the company.

Procedure following appointment

First meeting of creditors

58. (1) The notice of the first meeting of creditors required to be sent under section 281(1) of the Act shall state—

(a) the business to be conducted at the meeting, as permitted by subregulation (2); and

(b) that the liquidator will, at the request of any creditor, during the period before the date of the meeting furnish the creditor with—

(i) a list of the creditors of the company known to the liquidator; and

(ii) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide,

and shall be accompanied by a claim form as required by regulation 71.

(2) The first meeting of creditors may pass only one or more of the following resolutions—

(a) such resolutions as are necessary to exercise the powers specified in section 281(4) of the Act;

(b) resolution to adjourn the meeting for a period of not more than twenty-one days;

(c) if the meeting has been requisitioned in accordance with section 285*(b)*(iii) of the Act, a resolution that the expenses of calling and holding the meeting are to be payable out of the assets of the company;

(d) any other resolution that the chair allows to be put to the meeting.

Advertisement of appointment

59. (1) This regulation applies to the advertisement by a liquidator of his appointment as required by section 280*(a)* of the Act.

(2) A liquidator shall advertise his appointment—

(a) as specified in regulation 105(1)*(a)*;

(b) in a newspaper published and circulating in Montserrat; and

(c) in such other newspaper or newspapers, if any, that he considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

Authentication of liquidator's appointment

60. A copy of the certificate of the liquidator's appointment (if appointed by the members) or, as the case may be, a sealed copy of the Court's order appointing the liquidator, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's liquidation.

Removal, resignation and death of liquidator

Removal of liquidator

61. (1) Application for the removal of a liquidator under section 289 of the Act is made by filing at Court—

(a) an application stating the grounds upon which the removal of the liquidator is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the liquidator and the Official Receiver, unless it is his application, not less than ten days before the date fixed for the hearing.

(3) The liquidator may file affidavit evidence in opposition to the application not less than four days before the date fixed for the hearing of the application.

(4) The liquidator shall, not less than four days after being served with an application under subregulation (2), send to the Official Receiver a statement as to

whether any of the company's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—

(a) the nature, value and location of the assets;

(b) any action taken by the liquidator to deal with the assets or his reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a liquidator shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the liquidator on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove the liquidator of a company are not payable out of the assets of the company.

(8) If the Court removes a liquidator under section 289 of the Act, it shall send a copy of the order removing him to—

(a) the liquidator removed;

(b) any remaining liquidator; and

(c) the Official Receiver.

(9) If the Court removes a liquidator under section 289 of the Act, it may appoint the Official Receiver as liquidator under section 289(3)*(b)* of the Act even though the company commenced liquidation on the appointment of a liquidator by the members under section 258 of the Act.

Resignation of liquidator no longer eligible to act

62. (1) If the liquidator resigns under section 290(1)*(a)* of the Act, he shall send the Official Receiver with the notice of his resignation, a statement covering the matters specified in regulation 61(4).

(2) The liquidator shall, if so directed by the Official Receiver, verify the statement by affidavit.

Resignation of liquidator for other reason

63. (1) Unless the liquidator is a joint liquidator resigning in accordance with section 290(4) of the Act, the notice of a creditors' meeting sent to creditors in accordance with section 290(5) of the Act shall be accompanied by an account of the liquidator's administration of the liquidation, including a summary of his receipts and payments.

(2) The liquidator shall, not less than seven days before the date fixed for the creditors' meeting—

(a) send a copy of the notice and account referred to in subregulation (1) and a statement covering the matters specified in regulation 61(4) to the Official Receiver; and

(b) if he was appointed by the Court, file a copy of the notice and account with the Court.

(3) If, at a creditors' meeting called under section 290(5) of the Act, either of the following resolutions is passed—

(a) that the liquidator's resignation be accepted;

(b) that a new liquidator be appointed,

the chair shall, forthwith, send the Official Receiver a copy of the resolution together with a certificate of the liquidator's appointment, signed by the chair.

(4) If a liquidator's resignation is accepted by the creditors, he shall forthwith—

(a) send a notice of his resignation to the Official Receiver; and

(b) if he was appointed by the Court, file a notice of his resignation with the Court.

(5) The liquidator's resignation is effective from the date that the notice of his resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former liquidator.

(6) Within fourteen days of receiving a copy of the endorsed notice from the Official Receiver under subregulation (5), the former liquidator shall file a copy of the endorsed notice with the Registrar.

Leave to resign

64. (1) A liquidator shall, not less than seven days before the date fixed for the hearing of an application for leave to resign under section 290(7) of the Act, give notice of his application to—

(a) any joint liquidator;

(b) the creditors' committee, if any; and

(c) the Official Receiver.

(2) If the Court gives the liquidator leave to resign, it may make such provision as it considers appropriate with respect to matters arising in connection with the resignation.

(3) If the Court gives the liquidator leave to resign, section 290(3) of the Act and regulation 61(9) apply with such modifications as are necessary.

(4) The Court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of the copies to the Official Receiver.

(5) Within fourteen days of his resignation, the former liquidator shall send a notice of his resignation to the Official Receiver and to the Registrar.

Death of liquidator

65. (1) If the liquidator dies, his personal representative shall give notice of his death to the Official Receiver and the Registrar, specifying the date of his death, unless

notice has already been given to the Court and the Registrar under subregulations (2) or (3).

(2) If a liquidator who dies was a partner in a firm, notice of his death may be given to the Official Receiver and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of a liquidator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

(4) If the Official Receiver receives a notice under subregulation (3) and the deceased liquidator was the sole liquidator of the company, the Official Receiver shall as soon as reasonably practicable apply to the Court under section 291(1) of the Act for the appointment of a replacement liquidator, unless an application has already been made by the creditors' committee.

Advertisement of appointment

66. (1) A liquidator who is appointed to replace a liquidator who has, for whatever reason, ceased to hold office, shall within twenty-one days of the date of the appointment, advertise his appointment.

(2) His advertisement shall state that he has been appointed in place of a liquidator who ceased office.

Claims and distributions

Solicitation

67. (1) If the Court is satisfied that any improper solicitation has been used by, or on behalf of, a liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the liquidator out of the assets of the company.

(2) An order of the Court under subregulation (1) overrides any resolution of the creditors' committee or any other provision of these Regulations.

List of members

68. (1) The list of members settled by the liquidator under section 295(1) of the Act shall identify—

(a) the classes of the company's shares, if more than one;

(b) the classes of members, if more than one.

(2) The list shall detail, in respect of each member—

(a) his name and address;

(b) the number and class of shares held by him, or the extent of any other interest to be attributed to him;

(c) if the shares are not fully paid up, the amounts that have been called up and paid in respect of them, and the equivalent if his interest is other than shares.

Procedure for settling list of members

69. (1) The notice given to each person under section 295(2) of the Act shall state—

(a) in what character and for what number of shares or what interest, he is included in the list;

(b) what amounts have been called up and paid up in respect of the shares or interest;

(c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called; and

(d) the rights of a person to object under subregulations (2) and (3).

(2) If a person objects to any entry in, or omission from, the list, he shall inform the liquidator of his objection in writing within twenty-one days from the date of the notice.

(3) If the liquidator receives an objection under subregulation (2), he shall, within fourteen days, give notice to the objector either—

(a) that he has amended the list, specifying the amendment; or

(b) that he does not accept the objection and that he does not intend to amend the list.

(4) A notice given under subregulation (3) shall contain a summary of the effects of section 295(3) and (4) of the Act.

Claims by unsecured creditors

70. A claim made against a company in liquidation by an unsecured creditor under section 310 of the Act shall be in the specified form and shall specify—

(a) the name and address of the creditor;

(b) the total amount of his claim as at the commencement of the liquidation;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the company;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself.

Claim forms

71. (1) Unless the Court otherwise orders, the liquidator shall send a claim form to each creditor of whom he is aware, at the same time as he sends the creditor—

(a) notice of the first meeting of creditors under section 281(1)*(a)* of the Act; or

(b) notice under section 285*(b)* of the Act that he does not consider it necessary to call a meeting of creditors.

(2) The liquidator shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 281(1)*(a)* or section 285*(b)* of the Act.

Application to Court to expunge or amend an admitted claim

72. The applicant for an order expunging or reducing a claim under section 311(2) of the Act shall serve a copy of his claim—

(a) in the case of an application by the liquidator, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the liquidator and on the creditor who submitted the claim.

Negotiable instruments

73. The liquidator may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the liquidator.

Inspection of claims

74. The liquidator shall allow claims in his custody or control to be inspected by—

(a) a creditor who has submitted a claim in the liquidation that has not been wholly rejected by the liquidator;

(b) a contributory of the company;

(c) a person acting on behalf of a person referred to in paragraph *(a)* or *(b)*.

Distribution by dividend

75. The liquidator shall make a distribution by distributing dividends among the creditors whose claims he has admitted.

Notice to submit claim

76. A notice issued under section 317(1) of the Act fixing a date by which claims must be submitted, shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

Distributions

77. (1) In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision—

(a) for any claims which creditors may not have had sufficient time to make;

(b) for any claims which have not yet been determined; and

(c) for any disputed claims.

(2) A creditor who has not submitted a claim by the date specified in the notice issued under section 317(1) of the Act is not entitled to disturb, by reason that he has not participated in it, the distribution of the dividend.

(3) When a creditor referred to in subregulation (2) makes a claim that is accepted by the liquidator—

(a) he is entitled to be paid, out of any money for the time being available for distributing a further dividend, a payment in respect of any dividend which he has failed to receive; and

(b) any payment under paragraph *(a)* shall be paid before that money is used to distribute a further dividend to creditors.

(4) No action lies against the liquidator for a dividend but if he refuses to pay a dividend, the Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the Court rate, from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

Distribution of dividend

78. If the liquidator distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Creditors' and members' resolutions and meetings

Written resolutions of creditors and members

79. (1) The liquidator may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

(2) A notice under subregulation (1) shall specify the time and date by which votes on the resolution shall be received by him and a vote shall be counted if—

(a) the vote is received by the liquidator by the time and date specified in the notice; and

(b) the vote is accompanied by a completed statement of entitlement to vote.

(3) If any votes are received without the statement as to entitlement to vote, or the liquidator decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.

(4) The closing date for receipt of votes shall be set at the discretion of the liquidator but shall not be set less than fourteen days from the date of issue of the notice under subregulation (1).

(5) If a liquidator sends out a notice under subregulation (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with subregulation (6) by—

(a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or

(b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.

(6) A meeting is requisitioned under subregulation (5) by sending a notice to the liquidator within seven days after the date that the notices under subregulation (1) are sent out.

(7) If the resolution proposed in the notice is rejected by the creditors or members, the liquidator may call a meeting of creditors or members, as the case may be.

(8) A reference in the Act or these Regulations to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this regulation.

Calling of creditors' meetings

80. (1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting, a notice complying with these Regulations.

(2) Subject to any requirement of the Act or these Regulations, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the date and venue of a creditors' meeting shall be fixed by the convener and stated in the notice.

(3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside Montserrat.

(4) A notice sent to a creditor under subregulation (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him at least fourteen days before the date of the meeting.

(5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10 a.m. and 4 p.m. on a business day.

Form of notice calling creditors' meeting

81. (1) In addition to any other requirements of the Act or these Regulations, a notice calling a meeting of creditors shall contain—

(a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and

(b) an explanation as to—

(i) the majority required to pass a resolution at the meeting; and

(ii) the basis on which a person will be admitted to vote at the meeting.

(2) The convener of a meeting of creditors shall send, or cause to be sent, together with every notice—

(a) a form of proxy; and

(b) any document required by the Act or these Regulations to be sent with the notice.

(3) If a copy of the notice, together with any other documentation, is required by the Act or these Regulations to be sent to a person not entitled to vote at the meeting, the convener shall send, or cause to be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least fourteen days before the date of the meeting.

(4) Neither the proceedings at, nor any resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

Notice to be given to creditors

82. (1) The convener of a creditors' meeting shall send a notice to every creditor—

(a) specified in the statement of affairs or statement of assets and liabilities, if any; and

(b) of whom the convener is otherwise aware.

(2) The convener of a creditors' meeting is not in breach of any requirement of the Act or these Regulations to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

Notice of meetings by advertisement

83. (1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.

(2) In considering whether to make a direction under this regulation, the Court shall have regard to—

(a) the cost of public advertisement;

(b) the assets available in the liquidation; and

(c) the extent of the interest of creditors or any particular class of either.

Notice to Registrar, Commission and Official Receiver

84. If a convener is required by the Act or these Regulations to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Receiver, he shall file the notice, together with any accompanying documentation, at least fourteen days before the date set for the meeting.

Meetings requisitioned by creditors

85. (1) This regulation applies if creditors are permitted by the Act or these Regulations to requisition a meeting.

(2) A notice requisitioning a creditors' meeting shall be sent to the liquidator by a creditor accompanied by—

(a) a list of creditors supporting the requisition, showing the amounts of their respective claims;

(b) the written confirmation of each creditor on the list that he supports the requisition; and

(c) a statement—

(i) specifying the section of the Act or the regulation under which the meeting is requisitioned;

(ii) that the creditors on the list comprise at least the minimum number of creditors required; and

(iii) of the purpose of the meeting.

(3) Subject to subregulation (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the liquidator in accordance with subregulation (2).

(4) If the liquidator is satisfied that a requisition complies with the Act and these Regulations, he shall, within five business days of receiving the notice under subregulation (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the liquidator sufficient security to cover those costs.

(5) If the liquidator is not satisfied that a requisition complies with the Act and these Regulations, he shall notify the creditor in writing stating the reasons for his conclusion.

(6) Upon receipt of the deposit referred to in subregulation (4), the liquidator shall fix a venue for the meeting not more than thirty-five days from his receipt of the deposit and shall give not less than twenty-one days' notice of the meeting to creditors.

(7) A meeting held under this regulation may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.

(8) To the extent that any deposit paid to the liquidator under this regulation is not required for the payment of the expenses of calling and holding the meeting, it shall be repaid to the person who paid the deposit.

Chair

86. (1) Subject to subregulations (2) and (3), every creditors' meeting shall be chaired by the convener.

(2) If the convener is the liquidator or the Official Receiver and he is unable to attend the meeting, he may, in writing, nominate as chair—

(a) in the case of the liquidator—

(i) an eligible insolvency practitioner; or

(ii) an employee of the liquidator, or of his firm, who is experienced in insolvency matters; or

(b) in the case of the Official Receiver, a member of his staff.

(3) If a creditors' meeting convened by an insolvency practitioner or the Official Receiver is to be held outside Montserrat and he will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chair.

Suspension

87. Once only in the course of any meeting, the chair may, in his discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

Adjournment of meetings

88. (1) If within thirty minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chair of the meeting, the meeting is adjourned to the same time and place in the following week or, if that is not a business day, to the same time on the next following business day.

(2) Subject to subregulation (3), unless those persons present, in person or by proxy holder, pass a resolution to the contrary, the chair may adjourn a creditors' meeting.

(3) The chair of a creditors' meeting may not adjourn or further adjourn a meeting under subregulation (2) to a date more than fourteen days after the date fixed for the original meeting.

Chair as proxy holder

89. (1) The chair shall not by virtue of any proxy he holds, vote on a resolution concerning the remuneration or expenses of the liquidator unless the proxy specifically directs him to vote in that way.

(2) If the chair uses a proxy contrary to subregulation (1), his vote with that proxy does not count towards any majority under this regulation.

(3) If the chair holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution—

(a) he shall propose it himself, unless he considers that there is good reason for not doing so; and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why he did not propose it.

Quorum

90. (1) The quorum for a meeting of creditors is at least one creditor entitled to vote.

(2) A creditor shall be counted towards the quorum for the purposes of subregulation (1) if he is present or represented by a proxy holder, including the chair.

(3) If at any meeting of creditors—

(a) a quorum is present by the attendance of the chair alone or by the chair together with one additional creditor; and

(b) the chair is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote,

the meeting shall not commence until at least fifteen minutes after the time set for its commencement.

Entitlement to vote

91. (1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12 p.m. on the business day before the day fixed for the meeting—

(a) he has given written notice of his claim to the liquidator and the claim is admitted in accordance with regulation 94; and

(b) any proxy that he intends to be used on his behalf has been lodged with the liquidator.

(2) The chair of a creditors' meeting may allow a creditor to vote, even if he has failed to comply with subregulation (1)*(a)*, if he is satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The votes of a creditor are calculated on the value of the creditor's claim made in accordance with the provisions of the Act and these Regulations that relate to a claim in a liquidation.

(4) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except if the chair agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

Resolutions and requisite majorities

92. (1) Unless the Act or these Regulations provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50% in value of the creditors present in person or by a proxy holder who vote on the resolution.

(2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.

(3) If a resolution is proposed which affects a person in respect of his remuneration or conduct as a liquidator, or as a proposed or former liquidator, the vote of that person and of any partner or employee of his, shall not be counted in the majority required for passing the resolution.

(4) Subregulation (3) applies with respect to a vote given by a person whether personally, on his behalf by a proxy holder or as a proxy holder for a creditor.

Secured creditors and holders of negotiable instruments

93. (1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security interest as estimated by him.

(2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) as a security in his hands;

(b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his claim,

and the chair decides to admit the reduced claim for voting purposes.

Admission and rejection of claims

94. (1) Subject to subregulation (5), the chair of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.

(2) The chair of a creditors' meeting may admit or reject a claim in whole or in part.

(3) The chair of a creditors' meeting may require a creditor to produce any document or other evidence if he considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.

(4) If the chair of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he shall mark the claim as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(5) If a creditor's claim in a liquidation has been admitted by the liquidator, under section 310 of the Act, the chair of the creditors' meeting shall admit the claim in the same amount for the purposes of voting.

Appeals

95. (1) A creditor may appeal to the Court against any decision of a liquidator, or the chair of a creditors' meeting, under regulation 91 or 94.

(2) If on an appeal the chair's decision is reversed or varied, or votes are declared invalid, the Court may order another meeting to be summoned, or make such order as it thinks just.

(3) The Court's power to make an order under this subregulation is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

(4) An appeal under this regulation shall be made within a period of twenty-eight days from the date of the decision in respect of which the appeal is made.

(5) If, in the case of an appeal against the chair of a creditors' meeting, the Court reverses or varies the chair's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal, give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.

(6) Neither a liquidator, nor any person nominated to chair a creditors' meeting on his behalf in accordance with regulation 86(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this regulation, unless the Court makes an order to that effect.

Minutes

96. (1) The chair of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he authenticates the minutes.

(2) Minutes kept under subregulation (1) shall include a list of the creditors who attended the meeting, whether in person or by a proxy holder, the resolutions passed at the meeting and, if a creditors' committee is established, the names and addresses of those persons elected to be members of the committee.

(3) Minutes kept in accordance with this regulation shall be retained as a record in the liquidation.

Meetings of members

97. (1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside Montserrat.

(2) Regulations 86, 88(1), 90(2) and 90(3) apply to members' meetings with the substitution of "member" for "creditor" and with any other modifications that are necessary.

(3) The quorum for a meeting of members is—

(a) if the company only has one member or only has one member entitled to vote, that member; or

(b) if the company has more than one member entitled to vote, at least two members of those members.

(4) Subject to this regulation, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Act.

Proxies and Company Representation

General provisions concerning proxies

98. (1) Subject to subregulation (2), a person who desires to be represented at a creditors' meeting may give a proxy to an individual aged eighteen or over.

(2) Despite subregulation (1)—

(a) a principal may specify one or more other individuals aged eighteen or over to be proxy holder in the alternative, in the order in which they are named in the proxy; and

(b) a proxy for a particular meeting may be given to the chair of the meeting who cannot decline to act as proxy holder in such circumstances.

(3) A proxy requires the proxy holder, either as directed or in accordance with the proxy holder's discretion—

(a) to give the principal's vote on matters arising for determination at the meeting;

(b) to abstain; or

(c) to propose, in the principal's name, a resolution to be voted on by the meeting.

Issue and use of form of proxy

99. (1) A form of proxy sent with a notice of a meeting shall not have inserted in it the name or description of any person.

(2) A form of proxy shall not be used at a meeting unless it is the same or substantially similar to the form of proxy sent out with the notice calling the meeting.

(3) A form of proxy shall be signed by the principal, or by some person authorised by him, either generally or with reference to a particular meeting.

(4) If a form of proxy is signed by a person other than the principal, the nature of the person's authority shall be stated.

Use of proxies at meetings

100. (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) If the Official Receiver holds proxies for use at a meeting, any of his officers or employees that he authorises in writing may act as proxy holder in his place.

(3) If a liquidator holds proxies to be used by him as chair of a meeting, and some other person acts as chair, the other person may use the liquidator's proxies as if he were himself the proxy holder.

(4) If a proxy directs a proxy holder to vote for, or against, a resolution for the nomination or appointment of a person as liquidator, the proxy holder may, unless the proxy states otherwise, vote for or against, as the proxy holder considers fit, any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy holder may propose any resolution which, if proposed by another, would be a resolution in favour of which, by virtue of the proxy, he would be entitled to vote.

(6) If a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

101. (1) Subject to subregulation (2), proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) If the chair is not the liquidator, he shall deliver the proxies, immediately after the meeting, to the liquidator who shall retain them.

(3) Proxies shall be retained as records in the liquidation.

Right of inspection

102. (1) The liquidator shall allow proxies retained by him to be inspected, at all reasonable times on any business day, by—

(a) any creditor, in the case of proxies used at a meeting of creditors; and

(b) a member, in the case of proxies used at a meeting of the company or of its members.

(2) The reference in subregulation (1) to a creditor is to a creditor who has submitted a claim in the liquidation unless the creditor's claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(3) The right of inspection given by this regulation is also exercisable by a director of the company in liquidation.

(4) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor or member for the purpose of that meeting.

Proxy holder with financial interest

103. (1) A proxy holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any

remuneration out of the assets of the company in liquidation, unless the proxy specifically directs him to vote in that way.

(2) If a proxy holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in subregulation (1), he shall nevertheless not vote in that way unless he produces to the chair of the meeting written authorisation from his principal sufficient to show that the proxy holder was entitled so to sign the proxy.

(3) This regulation applies also to any person acting as chair of a meeting and using proxies in that capacity under regulation 100 and in its application to him, the proxy holder is deemed an associate of his.

Company representation

104. (1) If a person is authorised to represent a company at a meeting of creditors or of the company or its members, he shall produce to the chair of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution shall be under the seal of the company or certified by the secretary or a director of the company to be a true copy.

(3) This regulation does not require the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

General provisions

Advertisements

105. (1) Without limiting any specific requirement to advertise contained in the Act or these Regulations, if a person is required by the Act or these Regulations to advertise any application, order, notice or other document or matter, he shall, within the time specified in the Act or these Regulations—

(a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Government Printer for advertisement in the *Gazette*; and

(b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company in liquidation.

(2) The first meeting of creditors in a liquidation shall be advertised in the same newspaper as that in which, as the case may be, the notice of the appointment of the liquidator was advertised.

(3) If subregulation (2) applies, the liquidator may also advertise in such other newspaper as he thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

Insolvency practitioner's consent to act

106. The written consent of an insolvency practitioner to act as liquidator shall—

(a) if the appointment is to be made by the Court, specify the date of the hearing for which it is provided;

(b) if the appointment is to be made by the members of a company, specify that the consent is valid only for a meeting of the members to be held on a date specified in the consent, or at any adjournment of the meeting,

and, in either case shall state the period of time for which the consent is valid which shall not exceed six weeks.

Order to deliver assets and documents

107. **(1)** If any person has in his possession or control any assets or documents to which the company appears to be entitled, the Court may, on the application of the liquidator, require that person forthwith, or within such period as the Court may direct, to pay, deliver, convey, surrender or transfer the assets or documents to the liquidator.

(2) Subregulation (3) has effect if the liquidator—

(a) seizes or disposes of any asset which is not an asset of the company; and

(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of the Court or otherwise, to seize or dispose of that asset.

(3) In the circumstances specified in subregulation (2), the liquidator—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except insofar as that loss or damage is caused by the liquidator's own negligence; and

(b) has a lien on the asset, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Company's books

108. If a company is in liquidation, all documents of the company and of the liquidator are, as between the members of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in them.

Application to Court concerning liquidator

109. A person aggrieved by an act, omission or decision of a liquidator may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the liquidator.

Disclaimer

Notice of disclaimer

110. **(1)** A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed at Court with a copy.

(3) The original notice and the copy notice shall be sealed by the Court, endorsed with the date of filing and the copy notice shall be returned to the liquidator.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the sealed notice of disclaimer was returned to the liquidator.

Communication of notice of disclaimer

111. **(1)** Written notice of a disclaimer notice shall be given under section 318(2) and 319(2) of the Act by sending or giving a copy of the sealed and endorsed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 318 of the Act, the following are persons whose rights are affected by a disclaimer of property—

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(c) if the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a liquidator that a person's rights are affected by a disclaimer, the liquidator shall forthwith give written notice of the disclaimer to that person in accordance with this regulation unless—

(a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A liquidator disclaiming property may at any time, in addition to his obligations under the Act and these Regulations, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

Duty to keep Court informed

112. The liquidator shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Act and these Regulations, specifying the name and address of each person and his interest in the property disclaimed.

Notice to elect

113. A notice to elect shall be served on a liquidator by delivering the notice to him personally or sending it to him by registered post.

Notice to declare interest in onerous property

114. (1) If it appears to the liquidator that a person may have an interest in onerous property, he may give notice to that person to declare, within fourteen days, whether he claims any interest in the property and, if so, the nature and extent of his interest.

(2) If a person fails to comply with a notice given under subregulation (1), the liquidator is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

Application for vesting order or order for delivery

115. (1) An application for a vesting order or an order for delivery under section 322 of the Act shall be made within three months of—

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the liquidator,

whichever is the earlier.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the liquidator and an affidavit—

(a) stating whether his claim is based upon an interest in the disclaimed property or whether it is based upon an undischarged liability;

(b) specifying the date upon which he received a copy of the liquidator's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 322 of the Act.

(3) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the liquidator—

(a) a sealed copy of the application endorsed by the Court; and

(b) a copy of the affidavit filed in support.

(4) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(5) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the liquidator.

(6) Unless there is an application, or more than one application, pending under section 322 of the Act, in a case where the property disclaimed is of a leasehold nature, and section 323(2) of the Act applies to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Investigation of affairs of a company in liquidation

Power to obtain information

116. **(1)** The liquidator or the Official Receiver may, by notice in writing, require a person specified in subregulation (2)—

(a) to provide him with such information concerning the company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs as he reasonably requires;

(b) to attend on him at such reasonable time and at such place as may be specified in the notice; or

(c) to be examined on oath or affirmation by him, or by his attorney-at-law, on any matter referred to in paragraph *(a)*.

(2) A notice under subregulation (1) may be sent to—

(a) an officer or former officer of the company;

(b) a member or former member of the company;

(c) a person who was involved in the promotion or formation of the company;

(d) a person who is, or within the relevant period has been, employed by the company, including a person employed under a contract for services;

(e) a person who is, or at any time has been, a receiver, accountant or auditor of the company;

(f) a person who is or who, at any time has been, an officer of or in the employment of a company which is an officer of the company; or

(g) if the notice is sent by the Official Receiver or a liquidator or provisional liquidator, to any person who has acted as liquidator or provisional liquidator of the company.

(3) A notice to provide information shall specify the period within which the information shall be submitted to the liquidator and shall state whether the liquidator requires the information to be verified by affidavit.

(4) If the liquidator requires the recipient of a notice under subregulation (1) to prepare and submit accounts of the company, regulation 130 applies with any necessary modifications.

(5) A liquidator shall not require accounts to be prepared and submitted to him for a period more than five years prior to the commencement of the liquidation without the leave of the Court.

(6) The liquidator may issue subsequent notices to a person under this regulation, even though a previous notice has been fully complied with.

(7) A person who receives a notice under subregulation (1) and who, without reasonable excuse, fails to comply with the notice, commits an offence and is liable on summary conviction, to one year imprisonment or to a fine of $50,000 or to both.

Examination by liquidator or Official Receiver

117. (1) This regulation applies to the examination of a person under regulation 116(1)*(c)* by the liquidator or the Official Receiver.

(2) The liquidator or Official Receiver, or the attorney-at-law conducting the examination on his behalf, may administer an oath to, or take the affirmation of, a person to be examined.

(3) A person required to be examined is entitled to be represented by an attorney-at-law.

(4) The liquidator or the Official Receiver shall ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

Examination before Court

118. (1) If a company is in liquidation, an application may be made to the Court, *ex parte*, by the liquidator or by the Official Receiver, for an order that a person specified in subregulation (3) appears before the Court for examination concerning the company, or a connected entity.

(2) Without limiting subregulation (1), an examination before the Court may cover the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or a connected entity.

(3) An application under subregulation (1) may be made in respect of—

(a) a person specified in regulation 116(2);

(b) any other person who the applicant considers is capable of giving information concerning the company or a connected entity; or

(c) any other person who the applicant knows or suspects has in his possession or control any asset of the company or is indebted to the company.

(4) An application under subregulation (1) shall state whether the applicant seeks a public or a private examination.

Application for examination

119. (1) An application for the examination before the Court of a person under regulation 118 shall be filed with the Court, without notice to the proposed examinee, together with a supporting affidavit.

(2) Neither the application nor the supporting affidavit is open to public inspection unless the Court otherwise orders.

(3) The matters contained in the supporting affidavit shall include—

(a) details of the proposed examinee and his relationship with the company concerned or a connected company;

(b) details of the matters upon which the applicant seeks to examine the proposed examinee and the reasons for his belief that the proposed examinee has knowledge of these matters;

(c) details of any books, records or other documents relating to the company or a connected company that the applicant believes are in the possession of the proposed examinee that he wishes the proposed examinee to produce at the examination;

(d) if an order for a public examination is sought, the justification for a public examination;

(e) a statement as to whether the matters upon which he seeks to examine the proposed examinee are matters that he could examine him on using his powers under regulation 116 and, if so, whether or not he has conducted such an examination;

(f) if the applicant has conducted an examination under regulation 116, the reasons why a further examination before the Court is necessary;

(g) if the applicant is entitled to examine the proposed examinee under regulation 116, but has not done so, the reasons for the application to examine him before the Court.

Order for examination

120. (1) In this regulation, **"examinee"** means the person to be examined before the Court.

(2) On hearing an application made under regulation 119, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subregulation (2)—

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the company, or a connected entity, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected entity;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

(f) if the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) If the Court makes an order under subregulation (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, if the liquidator is not the Official Receiver—

(a) if the applicant is the liquidator of the company, send a sealed copy of the order to the Official Receiver; or

(b) if the applicant is the Official Receiver, send a sealed copy of the order to the liquidator of the company.

(5) If an order under subregulation (2) is for the public examination of an examinee, the applicant shall give not less than fourteen days' notice of the examination to each creditor and member of the company.

(6) The Court may, as part of an order made under this regulation, or at any subsequent time, make one or more of the following directions—

(a) a direction specifying the matters upon which the examinee may be examined; and

(b) a direction specifying the procedures to be followed at the examination.

Adjournment of examination

121. (1) An examination held in accordance with an order made under regulation 120 may be adjourned by the Court either generally or to a fixed date.

(2) If an examination is adjourned generally, the Court may, on the application of the liquidator, the Official Receiver or the examinee—

(a) fix a venue for the resumption of the examination; and

(b) give directions as to the manner in which, and the time within which, notice is to be given to any person entitled to take part in the examination.

(3) If the application under subregulation (2) is made by the examinee, the Court may grant it on terms that the expenses of giving the notices required by subregulation (2) shall be paid by him and that, before a venue for the resumed examination is fixed, he shall deposit with the Court such sum as it considers reasonable to cover those expenses.

Examinee unfit for examination

122. (1) If an examinee is suffering from any mental disorder or physical affliction or disability that renders him unfit to undergo or attend for an examination, the Court may, on application, either stay the order for his examination or direct that it shall be conducted in such manner and at such place as it thinks fit.

(2) Application under this regulation shall be made—

(a) by a person who has been appointed by a court in Montserrat or elsewhere to manage the affairs of, or to represent, the examinee;

(b) by a relative or friend of the examinee whom the Court considers to be a proper person to make the application; or

(c) by the Official Receiver.

(3) If the application is made by a person other than the Official Receiver—

(a) it shall be supported by the affidavit of a medical practitioner as to the examinee's mental and physical condition; and

(b) at least seven days' notice of the application shall be given to the Official Receiver and the liquidator, if not the Official Receiver.

(4) If the application is made by the Official Receiver, it may be made *ex parte*, and may be supported by evidence in the form of a report by the Official Receiver to the Court.

Conduct of examination

123. (1) This regulation applies to an examination held pursuant to an order made under regulation 120.

(2) An examinee shall be examined on oath and he shall answer such questions as the Court may put or allow to be put to him.

(3) Subject to subregulation (2), an examination is conducted by the applicant, or by his attorney-at-law, and the person examined is entitled to be represented by an attorney-at-law who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

(4) The examinee may also be examined—

(a) if the applicant is the Official Receiver, by the liquidator; or

(b) if the applicant is the liquidator of the company, by the Official Receiver.

(5) At a public examination, questions may, with the leave of the Court, be put to the examinee by any creditor or member of the company present at the examination or by the attorney-at-law representing such creditor or member.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to regulation 124, the written record of an examination is admissible in evidence in any proceedings under this Act other than proceedings for a disqualification order.

Incriminating answers and admissibility of record

124. (1) An examinee is not excused from answering a question put to him at an examination held under regulation 116 or at an examination held pursuant to an order made under regulation 120 on the ground that the answer may incriminate him or tend to incriminate him.

(2) The record of an examination held under regulation 116 or pursuant to an order made under regulation 120 is not admissible as evidence in any criminal proceedings against the examinee except if he is charged with the offence of perjury.

Offence

125. **(1)** A person who, without reasonable excuse, fails to attend an examination ordered to be held under regulation 120, commits an offence and is liable on summary conviction, to one year imprisonment or to a fine of $25,000 or to both.

(2) If a person without reasonable excuse fails at any time to attend an examination ordered to be held under regulation 120, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may cause a warrant to be issued to a police officer or a prescribed officer of the Court—

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with these Regulations, until such time as the Court may order.

Statement of affairs

Notice to be given by liquidator

126. **(1)** If a liquidator requires a person to prepare a statement of affairs and submit it to him, he shall send a written notice to that person.

(2) A notice requiring a person to submit a statement of affairs shall state—

(a) the names and addresses of all other persons, if any, to whom the same notice has been sent;

(b) the dates within which the statement of affairs shall be made up to;

(c) the time within which the statement shall be delivered to the liquidator, which shall be no earlier than eighteen days after the date upon which the notice is sent to the person;

(d) the effect of regulation 127(3) (failure to submit statement of affairs and verifying affidavit an offence); and

(e) the effect of regulation 116, if appropriate (duty to provide information and attend on liquidator).

(3) A notice under subregulation (1) shall be accompanied by the forms required for the preparation of the statement of affairs.

(4) For the purposes of subregulation (2)*(b)*, a statement of affairs shall be made up to a date not more than fourteen days before the date of commencement of the liquidation.

Statement of affairs

127. **(1)** A statement of affairs shall be in the approved form and contain the following information and such other information as is specified in the approved form—

(a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;

(b) a list of the liabilities of the company;

(c) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;

(d) the names and addresses of the company's preferential creditors with the amounts of their respective claims;

(e) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;

(f) particulars of any debts owed by or to the company to or by connected persons;

(g) the names and addresses of the company's members, with details of their respective shareholdings.

(2) Subject to section 328 of the Act, a person required by a liquidator to prepare and submit a statement of affairs shall verify the statement of affairs by affidavit and submit the statement of affairs to the liquidator, together with the verifying affidavit, on or before the date specified in the notice sent to him under regulation 126(1).

(3) A person who, without reasonable excuse, contravenes subregulation (2) commits an offence and is liable on summary conviction to six months' imprisonment or to a fine of $25,000 or to both.

Affidavit of concurrence

128. (1) A person required by a liquidator to prepare and submit a statement of affairs may, instead, submit an affidavit of concurrence.

(2) Subject to subregulation (4), an affidavit of concurrence is an affidavit stating that the maker of the affidavit—

(a) has been provided with a statement of affairs of a company prepared and verified by another person in accordance with the Act and these Regulations following a notice sent to him by the liquidator;

(b) concurs that the statement of affairs is complete and accurate and is not, in any respect, misleading; and

(c) has sufficient direct knowledge of the company's affairs to make the affidavit.

(3) A statement of affairs, with which the maker concurs, shall be exhibited to an affidavit of concurrence.

(4) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, if the person making the affidavit of concurrence considers the statement of affairs to be erroneous or misleading or he is without the direct knowledge necessary for concurring with it.

(5) A person who submits an affidavit of concurrence to a liquidator on or before the date specified in the notice sent to him is not guilty of an offence under regulation 127(3).

Filing of statement of affairs and affidavit of concurrence

129. (1) Subject to section 328 of the Act and to subregulation (2), a liquidator shall as soon as reasonably practicable after receiving a verified statement of affairs or an affidavit of concurrence, file a copy with the Registrar and with the Court.

(2) A liquidator appointed by the members of a company is not required to file a verified statement of affairs or an affidavit of concurrence with the Court.

Expenses of statement of affairs

130. (1) Subject to subregulation (3), a person preparing a statement of affairs and making a verifying affidavit shall be allowed and paid by the liquidator out of the assets of the company any expenses he incurs in so doing which the liquidator considers reasonable.

(2) This regulation does not relieve a person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to, the liquidator.

(3) No payment may be made to the liquidator or any of his associates in respect of any assistance given to a person in the preparation of his statement of affairs unless approved by the creditors' committee.

Order for limited disclosure

131. (1) If the Court makes an order of limited disclosure under section 328 of the Act in respect of a statement of affairs, the liquidator shall, as soon as reasonably practicable, file the verified statement of affairs with the Registrar, to the extent provided by the order.

(2) If there is a material change in circumstances rendering the limit on disclosure, or any part of it, unnecessary, the liquidator shall, as soon as reasonably practicable after the change, apply to the Court for the order to be varied or rescinded.

(3) The liquidator shall, as soon as reasonably practicable after the making of an order under subregulation (2), file the verified statement of affairs with the Registrar, to the extent provided by the order.

Application by creditor for disclosure

132. (1) If a creditor seeks disclosure of a statement of affairs or a specified part of a statement of affairs in relation to which an order for limited disclosure has been made under section 328 of the Act, he may apply to the Court for an order that the liquidator disclose it or a specified part of it.

(2) An application under subregulation (1) shall be—

(a) supported by an affidavit; and

(b) served on the liquidator, together with the supporting affidavit, not more than three business days prior to the date fixed for the hearing.

(3) The Court may make an order for disclosure to the creditor subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

Creditors' committee

Establishment of creditors' committee

133. (1) The creditors of a company in liquidation may, by resolution passed at a meeting, establish a creditors' committee at any time after the appointment of the liquidator.

(2) A resolution to establish a creditors' committee shall also appoint the first members of the committee, each of whom shall be eligible to serve on the committee in accordance with these Regulations.

(3) A resolution to establish a creditors' committee may only be passed—

(a) at a meeting called under section 281 of the Act; or

(b) at a meeting requisitioned for the purpose by at least 10% in value of the creditors of the company.

(4) If a creditors' committee is established, notice shall be given in accordance with these Regulations.

Notice of establishment of committee

134. (1) If the liquidator is satisfied that a creditors' committee has been validly established, he shall, within five business days of the passing of the resolution, file a notice to that effect—

(a) in the case of a liquidator appointed by the Court, with the Registrar and the Court; or

(b) in the case of a liquidator appointed by the members of the company, with the Registrar.

(2) The notice required to be filed under subregulation (1) shall specify the names and addresses of the persons appointed to the creditors' committee.

(3) The creditors' committee cannot act until the relevant notice is filed by the liquidator under subregulation (1).

(4) The appointment of a member of a creditors' committee may be in the form of the appointment of a designated representative of the member.

Functions and powers of creditors' committee

135. (1) The functions of a creditors' committee are to—

(a) consult with the liquidator about matters relating to the liquidation;

(b) receive and consider reports of the liquidator;

(c) assist the liquidator in discharging his functions; and

(d) discharge any other functions assigned to it under the Act or these Regulations.

(2) A creditors' committee may—

(a) call a meeting of creditors;

(b) on giving the liquidator reasonable notice, require him to provide the committee with such reports and information concerning the liquidation as the committee reasonably requires; and

(c) on giving the liquidator not less than five business days' notice, require him to attend before the committee at any reasonable time to provide it with such information and explanations concerning the liquidation as it reasonably requires.

(3) If the creditors' committee requires the attendance of the liquidator at a meeting under subregulation (2)*(c)*—

(a) the notice shall be signed in writing by a majority of the members of the committee; and

(b) the meeting shall be fixed for a business day and shall be held at such time and place as the committee may agree with the liquidator.

(4) The designated representative of a committee member may sign a notice under subregulation (3)*(a)* on the member's behalf.

(5) Unless expressly permitted to do so by the Act or these Regulations, a creditors' committee cannot give directions to the liquidator.

(6) A creditors' committee may, by resolution, adopt rules that are not inconsistent with the Act or these Regulations.

Composition of committee and eligibility to act

136. (1) A creditors committee shall comprise at least three but not more than five members each of whom shall be a creditor of the company—

(a) who has consented in writing to serve on the committee; and

(b) whose claim has not been rejected for the purposes of his entitlement to vote or for distribution purposes.

(2) A body corporate may be a member of the creditors' committee, but it cannot act as a member otherwise than by its designated representative appointed under regulation 137.

Committee member's designated representative

137. (1) A committee member may be represented by another person authorised by him as his designated representative for that purpose.

(2) A person acting as the designated representative of a committee member shall hold a letter of authority entitling him to act, either generally or specifically, and signed by or on behalf of the committee member.

(3) The chair at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority and may exclude him if it appears that his authority is deficient.

(4) No committee member may be represented by—

(a) a body corporate;

(b) a person who is an undischarged bankrupt; or

(c) a person who is disqualified for appointment as a director of a company under section 140 of the Act.

(5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.

(6) If a member's representative signs any document on the member's behalf, the fact that he so signs shall be stated below his signature.

Resignation and termination of committee member

138. (1) A member of a creditors' committee may resign by giving notice in writing to the liquidator.

(2) The membership of a committee member is terminated if—

(a) he becomes bankrupt or compounds or arranges with his creditors;

(b) he is absent from three consecutive meetings of the committee without the leave of the other members;

(c) ceases to be, or is found never to have been, a creditor; or

(d) in the case of the designated representative of a member, his designation as a designated representative is terminated by the member he represents.

(3) A member of the committee may be removed by a resolution of creditors of which he has been given at least five business days' notice, stating the object of that meeting.

(4) If a member of the creditors' committee becomes bankrupt, his bankruptcy trustee replaces him as a member of the committee.

Vacancies and appointment of new members

139. (1) If there is a vacancy in the membership of the committee, the continuing members of the committee, if not less than two in number, may continue to act.

(2) The continuing members of the committee, or if their number has fallen below two, the liquidator, may appoint a person eligible under regulation 136 as a member of the committee to fill a vacancy.

(3) If there is any change in the membership of the committee, the liquidator shall, within five business days, file a notice specifying the members of the committee following the change—

(a) in the case of a liquidator appointed by the Court, with the Registrar and the Court; or

(b) in the case of a liquidator appointed by the members of the company, with the Registrar.

(4) The notice required to be filed under subregulation (3) shall specify the names and addresses of the members of the creditors' committee.

Formal defects

140. The acts of a creditors' committee are valid despite any defect in the appointment, election or qualifications of any member of the committee or in the formalities of its establishment.

Committee may establish own procedures

141. (1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Act or these Regulations.

(2) Without limiting subregulation (1), the committee may agree procedures for—

(a) the participation by members in meetings by telephone or other electronic means; and

(b) the passing of written resolutions.

Meetings of a creditors' committee

142. (1) Subject to subregulation (2), meetings of a creditors' committee—

(a) may be held at such venues as the committee may resolve; and

(b) may be called by a member of the committee or by the liquidator.

(2) If a meeting has not already been held, the liquidator shall call a first meeting to be held not less than twenty-eight days after the committee's establishment.

(3) The person convening a meeting shall give seven days' written notice of the venue of the meeting to each member of the committee and to the liquidator.

(4) Despite subregulation (3), a member of the committee may, before or at the meeting, waive his entitlement to notice under that subregulation.

Chair of meetings

143. (1) Subject to subregulation (2), every meeting of the creditors' committee shall be chaired by the liquidator.

(2) If the liquidator is unable to attend the meeting, he may nominate as chair—

(a) an eligible insolvency practitioner; or

(b) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters.

(3) If a meeting of the creditors' committee is to be held outside Montserrat and the liquidator will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chair.

(4) If a meeting of the creditors' committee is held pursuant to a notice issued by the committee under regulation 135(2)*(a)*, the members of the creditors' committee may elect one of the members of the committee to be chair of the meeting in place of the liquidator or his nominee.

Quorum and resolutions

144. (1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.

(2) At a meeting of the committee, each member has one vote, and a resolution is passed by a simple majority of those members who are present and vote.

(3) A resolution shall be recorded in writing, signed by the chair and retained as a record in the liquidation.

Written resolutions

145. (1) The liquidator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the liquidator and the committee member.

(2) A notice sent to a member under subregulation (1) shall be set out so as to enable the committee member to signify his dissent or agreement to each separate resolution on which the liquidator seeks agreement.

(3) Any member of the committee may, within seven days of a notice being sent out under subregulation (1), require the liquidator to call a meeting of the creditors' committee to consider the matters raised by the resolution.

(4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the liquidator is notified in writing by a majority of the committee members that they agree with it.

(5) A resolution passed under this regulation shall be treated as a resolution passed at a meeting of the creditors' committee.

(6) Without limiting subregulation (1), written notice may be given by post, fax or e-mail.

Cooperation by liquidator with committee

146. Without limiting regulation 135(2)*(b)* and *(c)*, a requirement of the committee under that regulation to provide it with reports or information is not reasonable if the liquidator considers that—

(a) the requirement is frivolous or unreasonable;

(b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;

(c) the company does not have sufficient funds to enable him to comply with the requirement.

Termination of liquidation

147. The creditors' committee ceases to exist on the termination of the liquidation in which it was appointed.

Expenses of members

148. (1) Subject to subregulation (2), the liquidator shall, out of the assets of the company, defray, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the liquidation.

(2) Subregulation (1) does not apply to any meeting of the committee held within six weeks of a previous meeting unless the meeting in question is summoned at the instance of the liquidator.

Remuneration of liquidator

Remuneration of liquidator

149. (1) The remuneration of a liquidator is fixed—

(a) by the creditors' committee, if any;

(b) if there is no creditors' committee, if approved in accordance with these Regulations by 75% in value of the creditors; or

(c) by the Court on an application made under subregulation (2).

(2) A liquidator may apply to the Court to fix his remuneration and expenses, or to fix an interim payment under regulation 152(3), if—

(a) no creditors' committee is appointed and the creditors fail, for whatever reason, to fix his remuneration and expenses, or an interim payment;

(b) the creditors' committee fails, for whatever reason, to fix his remuneration and expenses, or an interim payment; or

(c) he considers that the remuneration and expenses, or an interim payment, fixed by the creditors' committee or the creditors—

(i) is insufficient;

(ii) is not in an appropriate currency; or

(iii) is on unacceptable terms.

(3) Not less than fourteen days' notice of an application under subregulation (2) shall be given—

(a) to each member of the creditors' committee; or

(b) if there is no creditors' committee, to such creditors as the Court may direct.

(4) The members of the creditors' committee or, if there is no creditors' committee, the creditors given notice of the hearing may appear and be heard at the hearing of an application made under subregulation (2).

(5) On the hearing of an application under subregulation (2), the Court shall fix the remuneration and expenses of the liquidator at such amount as it considers appropriate.

(6) In this regulation, **"liquidator"** does not include a provisional liquidator.

Application by creditors for reduction of remuneration

150. (1) If the creditors' committee has fixed the remuneration and expenses of a liquidator, a creditor may, with the concurrence of at least 25% in value of the creditors, including himself, apply to the Court for an order reducing the remuneration and expenses fixed on the grounds that they are excessive.

(2) On an application made under subregulation (1), the Court may—

(a) if it considers that the applicant has not shown sufficient cause for a reduction, dismiss the application; or

(b) set a venue for the application to be heard.

(3) An application shall not be dismissed under subregulation (2)*(a)* unless the Court has given the applicant the opportunity to attend the Court for an *ex parte* hearing, of which he has been given at least seven days' notice.

(4) An applicant for an order under subregulation (1) shall give the liquidator not less than fourteen days' notice of the date, time and place set by the Court under subregulation (2).

(5) If it considers that the remuneration and expenses of the liquidator fixed by the creditors' committee is excessive, the Court shall fix the remuneration and expenses to such amount as it considers appropriate.

General principles to be applied in fixing remuneration of liquidator

151. (1) This regulation applies to the fixing of the remuneration of—

(a) a liquidator by—

(i) a creditors' committee under regulation 149(1)*(a)*;

(ii) the creditors under regulation 149(1)*(b)*;

(iii) the Court under regulation 149(1)*(c)*; and

(b) a provisional liquidator by the Court under section 273 of the Act.

(2) Subject to subregulation (3), the remuneration of a liquidator shall be fixed by reference to the time properly given by him and his staff in carrying out his duties in the liquidation.

(3) If the liquidator so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of a liquidator may be fixed in whole or in part as a percentage of the value of the assets realised and the value of the assets distributed, or as a percentage of either.

(4) When fixing the remuneration of a liquidator in the circumstances specified in subregulation (1) or sanctioning an interim payment under regulation 152, the creditors' committee or the Court—

(a) shall take into account—

(i) the need for the remuneration to be fair and reasonable;

(ii) the time properly spent by the liquidator and his staff in carrying out his duties;

(iii) the complexity of the liquidation and whether the liquidator has been required to take any responsibility of an exceptional kind or degree;

(iv) the effectiveness with which the liquidator is carrying out, or has carried out, his duties;

(v) the value and nature of the assets with which the liquidator has had to deal;

(vi) the hourly rates charged by other liquidators, both within and outside Montserrat, in undertaking similar work; and

(b) may take into account—

(i) the commercial and personal risks accepted by the liquidator;

(ii) the time spent by the liquidator and his staff outside Montserrat and the amount of travelling required;

(iii) the standards and practice used for assessing remuneration in jurisdictions other than Montserrat.

Time for fixing remuneration and interim payments

152. (1) The remuneration of the liquidator shall be fixed by the creditors' committee or the Court after the conclusion of the liquidation.

(2) In fixing the remuneration of the liquidator, the creditors' committee or the Court shall take account of any interim payment made under subregulation (3).

(3) Despite subregulation (1), a creditors' committee, the creditors or the Court may at any time set an interim payment to be made to the liquidator on account of his remuneration.

(4) An interim payment may be made under subregulation (3) subject to such conditions as the creditors' committee, the creditors or the Court considers appropriate.

Court procedures

Application of the Civil Procedure Rules

153. **(1)** Despite Rule 2.2(3)*(b)* of the Civil Procedure Rules, except to the extent that they are inconsistent with the Act or these Regulations or a practice direction issued under regulation 156 and subject to subregulation (2), the Civil Procedure Rules apply to liquidation proceedings, with necessary modifications.

(2) The provisions of the Civil Procedure Rules specified in Schedule 2 do not apply in the liquidation of a company.

Filing of documents with the Court

154. Every document filed with the Court shall have endorsed upon it, the date and time at which it was filed and, if these Regulations so provide, shall be sealed.

Filing of documents with the Court in approved electronic form

155. **(1)** If these Regulations, the Civil Procedure Rules or any other enactment permit a document to be filed with the Court in approved electronic form, the document may be filed by—

(a) faxing the document to the fax number designated by the Court for the purpose;

(b) sending it as an attachment to an e-mail to the e-mail address designated by the Court for the purpose; or

(c) in accordance with the enactment.

(2) Subject to any specific provisions in these Regulations, the filing of a document in accordance with this regulation shall have the same effect for all purposes as a document filed in paper form.

(3) A person filing a document in approved electronic form shall ensure that—

(a) if the document is faxed, a fax transmission report detailing the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the document and retained; or

(b) if the document is sent as an e-mail attachment, a record of the time and date of the e-mail and the address to which it was sent together with a copy of the document sent as an attachment is retained.

(4) A copy of the faxed document or of the e-mail attachment shall be sent as soon as reasonably practicable to the Court, to be placed on the Court file.

(5) A person filing a document in approved electronic form shall take three copies of the faxed document or the hard copy required by subregulation (3)*(b)* and any additional supporting documents required by the Rules to the Court on the next day that the Court is open for business.

Practice Directions

156. **(1)** The Chief Justice may issue a practice direction if required or permitted by the Act or these Regulations.

(2) If there is no express provision in the Act or these Regulations, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

(3) In the case of any inconsistency between a practice direction issued under this regulation and the Civil Procedure Rules, the practice direction issued under this regulation prevails.

(4) A practice direction issued under this regulation—

(a) shall be published in the *Gazette*; and

(b) comes into effect on its publication in the *Gazette* or on such later date as may be specified in the direction.

Compliance with practice directions

157. A party shall comply with any practice direction issued under regulation 156, unless he has a valid reason for not complying.

Practice guides

158. **(1)** The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.

(2) Parties shall have regard to any relevant practice guide.

(3) The Court may take account of any failure of a party to comply with any relevant practice guide when considering any order for costs.

PART 4

MISCELLANEOUS

Service of documents on company

159. **(1)** For the purposes of section 103(1) of the Act, the following are the prescribed methods for sending a document to the registered office or registered agent of the company—

(a) in the case of a document in legal proceedings—

(i) by serving it in accordance with the Civil Procedure Rules; or

(ii) by sending it in accordance with any directions as to service given by the court having jurisdiction in the proceedings;

(b) in the case of any other document—

(i) by posting the document to a postal box which the registered agent is using at the time;

(ii) by sending it by facsimile transmission to a telephone number used by the registered agent for the transmission of documents by facsimile; or

(iii) by sending it by email to an email address used by the registered agent at the time.

(2) For the purposes of section 103(2) of the Act—

(a) if a document is served by leaving it at the company's registered office, service is considered to be effective if it is proved—

(i) that the document was handed to an individual who is a director, officer or employee of the company; or

(ii) if an individual referred to in sub-paragraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;

(b) if a document is served by leaving it at the office of the company's registered agent, service is considered to be effective if it is proved—

(i) that the document was handed to an individual who is a director, officer or employee of the registered agent; or

(ii) if an individual referred to in sub-paragraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;

(c) if a document is posted to a postal box, the document is deemed to be received five working days after it is posted, or such shorter period as a court having jurisdiction in proceedings any matter may determine;

(d) if a document is sent by facsimile transmission, the document is deemed to have been received on the working day following the day on which it was sent; and

(e) if a document is sent by email, the document is deemed to have been received on the working day following the day on which it was sent.

(3) In proving service of a document by—

(a) post, it is sufficient to prove that—

(i) the document was properly addressed; and

(ii) all postal or delivery charges were paid; and

(iii) the document was posted to the post box concerned;

(b) facsimile transmission, it is sufficient to prove that the document was properly transmitted by facsimile machine to the company;

(c) email, it is sufficient to prove that—

(i) the document was properly addressed; and

(ii) the document was properly sent to the email address.

(4) A document is not to be deemed to have been served on a person in accordance with subregulation (2)*(c)*, *(d)* or *(e)* if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Companies Registry

Information to be contained in Register of Registered Charges

160. The Register of Registered Charges maintained in respect of a company shall contain the following information in respect of each charge registered—

(a) the registered name and company number of the company that has created the charge;

(b) the date and time of registration of the charge;

(c) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;

(d) a short description of the liability secured by the charge;

(e) a short description of the property charged;

(f) the name and address of the trustee for the security or, if there is no trustee, the name and address of the chargee;

(g) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to, or equally with, the charge;

(h) the name and address of the person who filed the charge for registration and the person's entitlement to file the charge;

(i) details of any variation of the charge registered under section 171 of the Act;

(j) the date and time of registration of any variation of the charge registered under section 171 of the Act;

(k) the name and address of the person who filed the variation of the charge for registration and the person's entitlement to file the variation;

(l) if a notice of satisfaction or release is registered under section 172 of the Act, details of the satisfaction of any registered charge or, if a charge has ceased to affect the property, or any part of the property of the company, details of the property that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and

(m) the date and time of registration of the notice of satisfaction or release registered under section 172 of the Act.

Prescribed particulars of members and directors

161. The prescribed particulars of a member and of a director for the purposes of section 373 of the Act, are the particulars required by the Act and these Regulations to be entered in the company's own register of members or register of directors, as the case may be, and, in the case of a nominee shareholder include particulars with respect to the person for whom the shareholder is a nominee.

Certificates of translation

162. (1) This regulation applies if a translation into the English language of a name of a company or foreign company or any document required to be filed, submitted or provided to the Registrar, is required by the Act or these Regulations to be certified as accurate.

(2) The person who made the translation shall certify, or verify, before a person authorised to act as a Notary Public or to administer oaths that—

(a) the translation is an accurate translation of the document concerned; and

(b) he has the necessary competence to translate the document into English.

(3) If a translation is certified or verified in a country outside Montserrat, the translation shall be certified or verified before a person authorised under the law of the country concerned—

(a) to act as a Notary Public, or equivalent; or

(b) administer oaths, or their equivalent.

(4) The requirements of subregulation (2) or (3) shall be treated as satisfied without the need for any certification or verification before a Notary Public (or its equivalent) or other person qualified to administer oaths if the translation of a document is carried out by a person who is duly sworn and appointed to translate documents—

(a) by a court in or outside Montserrat; or

(b) by the Government of Montserrat or the government of a country or territory outside Montserrat.

(5) A person who translates a document by virtue of subregulation (4) shall indicate in writing, the court or government by which the person is appointed.

Filing of documents with the Registrar of Companies

163. (1) Subject to subregulations (2), (3) and (6), a document required or permitted to be filed under the Act shall be filed by electronic means using the Electronic Registration System.

(2) Subregulation (1) does not apply to a document which cannot be filed using the Electronic Registration System.

(3) The Registrar may, by written notice exempt from subsection (1)—

(a) a company or a specified category or description of companies; or

(b) a document or a specified category or description of documents.

(4) If a document required or permitted under the Act or these Regulations to be filed cannot be filed using the Electronic Registration System or is covered by an exemption under subsection (2), the document is filed by delivering or posting it to the Registrar.

(5) A document is filed with the Registrar of Companies—

(a) in the case of a document filed electronically, at the time and on the date that it is recorded as having been filed by the Electronic Registry System;

(b) in the case of a document that is not filed electronically, on the date that it is received at the Companies Registry or, if it is received at a time when the Companies Registry is closed, on the next day on which the Companies Registry is open.

Notices, returns and documents to be filed by companies and foreign companies

164. (1) The notices, returns and documents specified in column 1 of the table in Schedule 3 shall be filed by companies or foreign companies on or before the due date, or within the period specified, in column 2 of the table in Schedule 3.

(2) A notice, return or document specified in Schedule 3 shall, if a form has been approved, be in and contain the particulars specified in the approved form.

(3) This regulation and Schedule 3 do not limit—

(a) any requirement of the Act to file a notice, document or return;

(b) the filing of any notice, document or return permitted to be filed by the Act.

Certificates of good standing

165. A certificate of good standing issued under section 376 of the Act shall state—

(a) that, at the date of the certificate, the company—

(i) is on the Register of Companies; and

(ii) has paid all fees and penalties due under the Act; and

(b) whether, at the date of the certificate—

(i) the company has filed articles of merger or consolidation that have not yet become effective;

(ii) the company has filed articles of arrangement that have not yet become effective;

(iii) the company is in voluntary liquidation;

(iv) the company is in liquidation or receivership and, if appropriate, stating that a receiver-manager has been appointed; or

(v) any proceedings to strike the name of the company off the Register of Companies have been instituted.

Publication of approved forms

166. **(1)** For the purposes of section 383(1) of the Act, the Commission publishes an approved form in the prescribed manner by—

(a) publishing the form on its website; and

(b) providing notice of the publication of the form to persons that the Commission considers will be substantially affected.

(2) The Commission may comply with subregulation (1)*(a)* by providing notice in such manner as the Commission considers appropriate to any professional or trade associations of which persons who may be affected by the form are members.

Fees and penalties

Fees and late payment penalties

167. The fees and late payment penalties specified in Schedule 4 shall be payable to the Registrar in respect of the matters to which they relate.

Registrar may impose financial penalties

168. **(1)** The Registrar may impose a financial penalty on a company or foreign company in respect of a breach of or failure to comply with the Act and the Regulations specified in Schedule 5.

(2) Subject to regulation 169(4) and (5), in determining the financial penalty to be imposed on a company or a foreign company, the Registrar—

(a) shall take into account the following matters—

(i) the nature and seriousness of the contravention;

(ii) in respect of the failure of a company or foreign company to file a document specified in Schedule 3 on or before the due date, the length of the period by which the document is overdue or was filed late;

(iii) whether the company or foreign company has previously contravened the Act or the Regulations; and

(iv) whether the contravention was deliberate or reckless or caused by the negligence of the company or foreign company; and

(b) may take into account such other matters as he considers appropriate.

(3) The maximum financial penalty that the Registrar may impose is $50,000.

Procedure for imposition of financial penalties

169. **(1)** If he intends to impose a financial penalty on a company or foreign company, the Registrar shall send a notice of his intention to the company—

(a) specifying—

(i) the reason for the imposition of the financial penalty; and

(ii) the amount of the penalty that he intends to impose; and

(b) advising the company of its right to make written representations to the Registrar in accordance with subregulation (2).

(2) A company or foreign company that receives a notice under subregulation (1) may, within twenty-eight days of the date upon which it receives the notice, send written representations to the Registrar—

(a) denying that the financial penalty is payable; or

(b) providing reasons that it considers justify the imposition of a lower penalty.

(3) After the expiration of twenty-eight days from the date that he sent a notice under subregulation (1) to a company or foreign company, the Registrar may send the company a penalty notice stating—

(a) the reason for the imposition of the financial penalty;

(b) the date on which notice of intention to impose a financial penalty was sent to the company;

(c) the amount of the penalty imposed; and

(d) a date, not less than fourteen days after the date of the penalty notice, by which the penalty shall be paid to the Registrar.

(4) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under subregulation (1).

(5) Before imposing a financial penalty against a licensee under subregulation (3), the Registrar shall consider any written representations received from the company and, if the Registrar receives such representations, it must provide reasons for the action taken.

(6) A company or foreign company that receives a penalty notice under this regulation shall pay the penalty stated to the Registrar on, or before, the date specified in the notice.

Transitional provisions

170. Regulation 163(1), (2) and (3) come into force six weeks after the commencement of these Regulations.

SCHEDULE 1

(Regulation 29)

CHARACTERS PERMITTED IN A COMPANY NAME

The following characters are permitted in a company name:

1. The letters A to Z, in lower and uppercase.
2. The numerals 0 to 9.
3. Any Roman numerals.
4. The following punctuation marks:

Full stop	.
Comma	,
Dash	-
Underscore	_
Apostrophe	‘’ or '
Brackets	[], () or {}
Exclamation mark	!
Question mark	?
Inverted commas	“” or "

5. The following symbols:

@ & * / \ <> + = # %

6. The Registrar may, generally or on a case–by–case basis, permit the use of—
   (a) accents with one or more letters; and
   (b) symbols that indicate a particular currency.

SCHEDULE 2

(Regulation 153)

PROVISIONS OF CIVIL PROCEDURE RULES NOT APPLICABLE IN LIQUIDATIONS

PART	PROVISION NOT APPLICABLE
Part 5 (Service of Claim Form Within Jurisdiction)	Rule 5.2 (Statement of claim to be served with claim form). Rule 5.16 (Service of claim by contractually agreed method). Rule 5.17 (Service of claim form on agent of principal who is out of jurisdiction). Rule 5.19 (Deemed date of service), paragraph (3) not applicable.
Part 7 (Service of Court Process out of Jurisdiction)	Rule 7.1 (Scope of this Part), paragraph (2)*(a)* and (2)*(c)* only. Rule 7.6 (Acknowledgement of service and defence where claim served out of the jurisdiction)
Part 8 (How to Start Proceedings)	Entire Part.
Part 9 (Acknowledgement of Service and Notice of Intention to Defend)	Entire Part.
Part 10 (Defence)	Entire Part.
Part 12 (Default Judgments)	Entire Part.
Part 13 (Setting Aside or Varying Default Judgment)	Entire Part.

Part 14 (Judgment on Admissions)	Entire Part.	
Part 15 (Summary Judgment)	Entire Part.	
Part 16 (Assessment of Damages)	Entire Part.	
Part 17 (Interim Remedies)	Rule 17.5	(Interim payments - general procedure).
	Rule 17.6	(Interim payments - conditions to be satisfied and matters to be taken into account).
	Rule 17.7	(Powers of Court where it has made an order for an interim payment).
Part 18 (Ancillary Claims)	Entire Part.	
Part 19 (Addition and Substitution of Parties)	Entire Part.	
Part 20 (Changes to Statement of Case)	Entire Part.	
Part 21 (Representative Parties)	Entire Part.	
Part 23 (Minors and Patients)	Entire Part.	
Part 26 (Case Management - The Court's Powers)	Rule 26.1	(The Court's general powers of management), paragraph (2)*(a)* and (2)*(b)* not applicable.
Part 60 (Appeals to the High Court)	Entire Part.	

SCHEDULE 3

(Regulations 164 and 168)

NOTICES, DOCUMENTS AND RETURNS REQUIRED TO BE FILED

A company or foreign company is required to file the notices, returns and documents specified in the first column on or before the due date, or within the period specified, in the fourth column.

Document	Approved Form (if any)	Section of Act	Date Due or Period within which Document to be Filed (if applicable)
1. Incorporation of a Company			
Application to incorporate a company	C-IN1	5	
Consent of registered agent to act		5	With application to incorporate
Copy of articles of incorporation		7	With application to incorporate
Application to reserve name	C-NR	20	
Registration of particulars of members and directors	C-MD	373	Not more than 14 days after incorporation
Notification of appointment of secretary of public company	C-AS C-ACS	135	Not more than 30 days after appointment
2. PSC Register			
Notice of details of PSC information and verification evidence	C-PSC-1	95	Not more than 14 days after incorporation
Notice of change in PSC information	C-C-PSC-1	95	Not more than 14 days after the later of— *(a)* the date of the change in PSC information; or *(b)* the date on which the company first became aware of the change in PSC information

3. Changes to Information Registered			
Notice of amendment of articles		10	
Notice of restated articles		11	
Notice of by-laws Copy of by-laws made		13	Required for public company, optional for any other company
Notice of amendment or repeal of by-laws		13	
Application for change of registered name		16	
Notice of change in number of shares company authorised to issue		39	
Notice of execution or termination of unanimous shareholder agreement, with date of execution or termination		76	Not more than 15 days after execution or termination
Notice of appointment of registered agent (company not having registered agent)		81	
Notice of change in registered office		82	
Notice of change in registered agent		82	
Notice of intention to resign as registered agent, together with list provided to company		83	
Notice of resignation of registered agent		83	
Notice or recission of notice of intention to resign as registered agent		83	
Notice of change of secretary of public company		136	Not more than 14 days after— *(a)* the change occurring; or *(b)* the date on which the company first became aware of the change
Notice of change in prescribed particulars of a member or director	C-IN C-AD	373	Not more than fourteen days after the change

Notice of change of directors	C-AD	149	Not more than 14 days after— *(a)* the change occurring; or *(b)* the date on which the company first became aware of the change
Notice of termination of appointment of director	C-TD	149	Not more than 14 days after— *(a)* the change occurring; or *(b)* the date on which the company first became aware of the change
Notice of change in name or address of director, or change of other details	C-CD	149	Not more than 14 days after— *(a)* the change occurring; or *(b)* the date on which the company first became aware of the change
4. Financial Returns			
Annual return		106	Not later than 1st April of each year
Annual financial statements, reports and return of reporting company		112	Not less than 21 days before each annual meeting of members or immediately after signing of resolution under section 73 In any event, not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution under section 73 signed

Interim financial statements or related documents of reporting company		112	Immediately if— *(a)* sends documents to its members; or *(b)* is required to provide to public authority or recognised exchange
Certificate of solvency (companies other than reporting companies)		113	Not less than 21 days before each annual meeting of members or immediately after signing of resolution under section 73 In any event, not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution under section 73 signed
5. Registration of Charges			
Application to register charge against company		170	
Application to register variation of registered charge		171	
Notice of satisfaction or release of registered charge		172	
Statutory declaration verifying matters stated in notice of satisfaction or release		172	
Notice stating name and address of person in Montserrat authorised to accept documents relating to charges sent by Registrar		173	With application to register charge or for variation of charge
Notice of change in person in Montserrat authorised to accept documents relating to charges sent by Registrar		173	

6. Merger, Consolidation and Arrangements			
Articles of merger or consolidation together with any resolution to amend articles of surviving company and, in the case of a consolidated company, articles for the consolidated company		192	
Articles of merger with subsidiary together with any resolution to amend articles of surviving company		193	
Merger or consolidation with foreign company - documents specified in section 195(2)*(b)* of the Act		195	
Articles of arrangement		198	
Copy of order of Court approving arrangement		201	
7. Continuation			
Application by foreign company to continue under Act with accompanying documents		203	
Notice of continuance in jurisdiction outside Montserrat		206	
8. Foreign Companies			
Application by foreign company for registration under Part 12 of the Act, together with documents specified in section 218	C-IN-O	218	
Notice by foreign company of change in registered particulars		220	
Notice of intention to resign as registered agent of foreign company, together with list provided to company		222	
Notice of resignation of registered agent of foreign company		222	
Notice that foreign company has ceased to carry on business in Montserrat		226	
Application by foreign company, removed from the Register, to be registered	C-RR	228	
Financial statements and returns		230	

9. Strike-off and Dissolution			
Application to restore struck-off company to the Register		237	Before the dissolution of the company (7 years after date of strike-off)
Notice of Court order to restore dissolved company to the Register		240	

SCHEDULE 4

(Regulation 168)

FEES AND LATE PAYMENT PENALTIES

Companies Incorporated, Registered or Continued under the Act		
No.	**Description**	**Fee (EC$)**
1.	For an application to incorporate a company—	
	(a) in the case of a company other than a non-profit company	400.00
	(b) in the case of a non-profit company	120.00
2.	For the issuance of a certificate of incorporation—	
	(a) in the case of a company other than a non-profit company	400.00
	(b) in the case of a non-profit company	120.00
3.	For an application to register a foreign company under Part 12 of the Act	1,000.00
4.	For the issuance of registration of a foreign company	350.00
5.	For filing an annual return on or before 1 April each year under section 106(3) of the Act	200.00
6.	For filing a notice of amendment of articles or by-laws	100.00
7.	For filing restated articles	100.00
8.	For filing a notice of setting out details of a change in the number of shares the company is authorised to issue	500.00
9.	For issuance of a notice of registration of an amendment of articles or by-laws	100.00
10.	For issuance of a notice of registration of restated articles	100.00
11.	For an application to change the registered name of a company	100.00

12.	For the issuance of a certificate of change of name	100.00
13.	For an application to reserve a name for a company or intended company	50.00
14.	For filing a notice of change of registered office	100.00
15.	For filing notice of change of registered agent	100.00
16.	For filing articles of merger or consolidation	700.00
17.	For issuance of a certificate of merger or consolidation	100.00
18.	For filing articles of arrangement	700.00
19.	For issuance of a certificate certifying that the articles of arrangement have been registered	100.00
20.	For filing a notice of a change in directors or of a change in the name or address of a director	100.00
21.	For an application by a reporting company under section 108 for authorisation to omit specified information from its financial statements	300.00
22.	For filing an application to restore a struck-off company to the Register	500.00
23.	For issuance of a certificate of restoration to the Register	100.00
24.	For filing notice of appointment of liquidator	100.00
25.	For a Certificate of Good Standing	150.00
26.	For issuance of a certificate of re-registration under paragraph 3 of Schedule 2 of the Act	25.00
Foreign Companies Registered under Part 12 of the Act		
27.	For an application by a foreign company for registration under Part 12 of the Act	1,000.00

28.	For issuance of a certificate of registration as a foreign company	350.00
29.	For registration of a change in particulars under section 220 of the Act	100.00
30.	For filing notice of ceasing to carry on business in Montserrat under section 226 of the Act	100.00
31.	For subsequent registration of foreign company under section 228 of the Act	1,500.00
32.	For an in-person search of the Register of Foreign Companies	50.00
33.	For an electronic search of the Register of Foreign Companies	50.00
34.	For a search of the Register of Foreign Companies by the Registrar on behalf of a person requesting the search	100.00
All Companies and Foreign Companies		
35.	For filing a document for which a fee is not specified	50.00
36.	For an in-person search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges	50.00
37.	For an electronic search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges	50.00
38.	For a search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges by the Registrar on behalf of a person requesting a search	100.00
39.	For issuance of any certificate for which a fee is not specified	100.00
40.	For certifying any document	100.00
41.	For provision of an uncertified copy of a document, or part of a document—	

	(a) in the case of a printed document (per page)	10.00
	(b) in the case of a scanned document (per scan)	10.00

SCHEDULE 5

(Regulation 168)

FINANCIAL PENALTIES

The Registrar may impose a financial penalty on a company or foreign company under the section specified in column 1 of the table below in respect of a breach of, or failure to comply with the Act, as specified in column 2 of the table.

Column 1	**Column 2**
Section	**Breach or Failure to Comply**
95	Failure to file details of PSC information and verification evidence within fourteen days of incorporation
95	Failure to file notice of change in PSC information within the time period specified in section 95
106	Failure to file an annual return on or before 1 April in any year
112	Failure by reporting company to file annual financial statements, reports and return within the time period specified in section 112
135	Failure by public company to file notice of appointment of secretary
136	Failure by public company to file notice of change of secretary
149	Failure to file notice of change of directors within the time period specified in section 149
149	Failure to file notice of change of termination of appointment of director within the time period specified in section 149
149	Failure to file notice of change in name or address of director, or change of other details within the time period specified in section 149
373	Failure to file notice setting out prescribed particulars of members and directors within fourteen days of incorporation
373	Failure to file notice of change in prescribed particulars of a member or director within fourteen days of the change