

THE INTERNATIONAL COMPANIES ACT 1994
(ACT No. 4 OF 1994)

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(No. 4 of 1994)

I assent

27 April, 1994

C. UTEEM
President of the Republic

ARRANGEMENT OF CLAUSES

Sections

PART I

Preliminary

1. Short Title
2. Interpretation

PART II

Constitution of Companies

3. Incorporation
4. Restriction on incorporation
5. Requirements of an International Company
6. Effect of failure to satisfy requirements of section 5
7. Personal liability
8. Business objects or purposes
9. Powers

10. Validity of acts of company
11. Name
12. Memorandum
13. Articles
14. Registration
15. Certificate of Incorporation
16. Amendment of Memorandum and Articles
17. Copies of Memorandum and Articles to members

PART III

Capital and Dividends

18. Shares to be fully paid
19. Kind of consideration for shares
20. Amount of consideration for shares
21. Power to allot shares
22. Fractional shares
23. Authorised capital in several currencies
24. Capital and surplus accounts
25. Dividend of shares
26. Increase or reduction of authorized capital
27. Division and combination of shares
28. Character of a share
29. Share certificates
30. Share register

- 31. Rectification of register
- 32. Transfer of registered shares
- 33. Transfer of bearer shares
- 34. Mortgages and charges on shares
- 35. Seizure
- 36. Acquisition of shares
- 37. Treasury shares disabled
- 38. Increase or reduction of share capital
- 39. Dividends
- 40. Appreciation of assets

PART IV

Registered Office and Agent

- 41. Registered office
- 42. Registered agent
- 43. Change of registered office or registered agent
- 44. Resignation of registered agent
- 45. Consequences of striking off under section 44
- 46. Penalty for contravention of sections 41 and 42

PART V

Directors, Officers, Agents and Liquidators

- 47. Management by directors
- 48. Unanimous shareholder agreement
- 49. Election, term and removal of directors
- 50. Optional register of directors
- 51. Disqualification of directors
- 52. Number of directors
- 53. Powers of directors
- 54. Emoluments of directors
- 55. Committees of directors
- 56. Meetings of directors
- 57. Notice of meetings of directors
- 58. Quorum for meetings of directors
- 59. Consents of directors
- 60. Alternates for directors
- 61. Meeting of single director or single member
- 62. Officers and agents
- 63. Standard of care
- 64. Reliance on records and reports
- 65. Conflicts of interest
- 66. Indemnification
- 67. Insurance

PART VI

Protection of Members and Creditors

- 68. Meetings of members
- 69. Notice of meetings of members
- 70. Quorum for meetings of members
- 71. Voting by members
- 72. Consents of members
- 73. Service of notice on members
- 74. Service of process on company
- 75. Books, records and common seal
- 76. Optional register of mortgages and charges
- 77. Inspection of books and records
- 78. Contracts generally
- 79. Contracts before incorporation
- 80. Contracts for payment or transfer
- 81. Notes and bills of exchange
- 82. Power of attorney
- 83. Authentication or attestation
- 84. Company without members

PART VII

Merger, Consolidation, Sale of Assets, Forced Redemptions, Arrangements and Dissenters

- 85. Interpretation of Part VII
- 86. Merger and consolidation
- 87. Merger with subsidiary
- 88. Effect of merger or consolidation
- 89. Merger or consolidation with foreign company
- 90. Disposition of assets
- 91. Redemption of minority shares
- 92. Arrangements
- 93. Rights of dissenters

PART VIII

Continuation

- 94. Continuation
- 95. Provisional registration
- 96. Certificate of continuation
- 97. Effect of continuation
- 98. Continuation under foreign law

PART IX

Winding-up, Dissolution and Striking-off

- 99. Compulsory winding-up and dissolution
- 100. Voluntary winding-up and dissolution
- 101. Powers of directors in a winding-up and dissolution
- 102. Appointment of liquidator
- 103. Duties of liquidator
- 104. Powers of liquidator
- 105. Procedure on winding-up and dissolution
- 106. Rescission of winding-up and dissolution
- 107. Winding-up and dissolution of company unable to pay its claims, etc.
- 108. Winding-up and dissolution by the Court
- 109. Receivers and managers
- 110. Striking-off
- 111. Restoration to register
- 112. Effect of striking-off
- 113. Appointment of official liquidator
- 114. Dissolution of company struck off

PART X

Limited Life Company

- 115. Registration as a limited life company
- 116. Maximum duration of a limited life company
- 117. Contents of the Articles
- 118. Winding up of a limited life company
- 119. Cancellation of registration
- 120. Definition of "transfer"

PART XI

Fees and Exemptions

- 121. Fees and penalties
- 122. Recovery of fees and penalties
- 123. General exemptions
- 124. Exemption from the Income Tax Act
- 125. Tax Residency
- 126. Exemption from the Exchange Control Act

PART XII

Miscellaneous

- 127. The Registrar of International Companies
- 128. Optional registration of registers
- 129. Optional registration of mortgages and charges

- 130. Confidentiality
- 131. Court Proceedings
- 132. Legal professional privilege
- 133. Investigation by the Registrar
- 134. Certificate of good standing
- 135. Certificate by Registrar
- 136. Jurisdiction
- 137. Judge in Chambers
- 138. Offences
- 139. Regulations
- 140. Consequential amendments
- 141. Transitional provisions
- 142. Commencement

AN ACT

To provide for the incorporation, regulation, operation and taxation of international companies and related matters

ENACTED by the Parliament of Mauritius, as follows:-

PART I

Preliminary

1. Short title

This Act may be cited as the International Companies Act 1994.

2. Interpretation

(1) In this Act -

"agent" includes registered agent;

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

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

"Authority", means the Mauritius Offshore Business Activities Authority;

"Branch Register of International Companies", means a Branch Register of international companies established by regulations made under section 127;

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

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

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

"certificate of continuation" means the certificate issued by the Registrar under Part VIII;

"company limited by guarantee" means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited both by shares and by guarantee" means a company formed on the principle of having the liability of its members -

- (a) in the case of members who hold shares, limited by the memorandum to any amount unpaid on the shares respectively held by them; and
- (b) in the case of members who have given a guarantee, limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by share" means a company formed on the principle of having the liability of its members limited by the memorandum to any amount unpaid on the shares respectively held by them;

"continued" in relation to an international company, means continued in accordance with Part VIII of this Act;

"Court" means the Supreme Court;

"date of incorporation" means the date shown on the certificate of incorporation issued by the Registrar under Section 14(3);

"director" includes any person occupying the position of director by whatever name called;

"Gazette" means the Gazette of the Government of the Republic of Mauritius;

"international company" means a company that satisfies the requirements set out under section 5;

"limited life company" means a company registered under section 115 of Part X;

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

"Memorandum" means the Memorandum of Association of a company;

"Minister" means the Minister to whom the responsibility for the subject of finance is assigned;

"offshore bank" means a bank licensed under the Banking Act 1988 to transact offshore banking;

"offshore company" has the meaning given to it under section 2 of the Mauritius Offshore Business Activities Act 1992;

"ordinary fees" means the fees prescribed under this Act and regulations made under it other than licence fee;

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

"registered agent" means the person who is at any particular time performing the functions of registered agent of a company incorporated under this Act;

"Register" means the Register of international companies required to be kept by the Registrar under section 127;

"Registrar" means the Registrar of International Companies designated under section 127;

"resident in Mauritius" means -

- (a) in relation to an individual, a person who has his domicile in Mauritius;
- (b) in relation to a body corporate, a body incorporated or registered under the laws of Mauritius, but does not include a company incorporated under this Act;

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

"share register" includes a register of members;

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

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

"unanimous shareholder agreement" means an agreement referred to in section 48;

"unlimited liability company" means a company formed on the principle of having no limit placed on the liability of its members;

- (2) A company that is incorporated under the Companies Act 1984 or under the laws of a jurisdiction other than that of the Republic of Mauritius shall be a company incorporated under this Act if it is continued as a company incorporated under this

Act in accordance with Part VIII and references in this Act to a "company incorporated under this Act" shall be construed accordingly.

- (3) A reference in this Act to voting in relation to shares shall be construed as a reference to voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.
- (4) Unless otherwise defined in the Articles, and subject to subsection (5), the expression "resolution of directors" means
 - (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or
 - (b) a resolution consented to in writing by an absolute majority, or such larger majority, as may be specified in the Articles, of all the directors or of all the members of the committee, as the case may be.
- (5) Where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities under subsection (4) by the number of votes he casts.
- (6) Unless otherwise defined in the Articles, the expression "resolution of members" means -
 - (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of
 - (i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain; or
 - (ii) a simple majority, or such larger majority as may be specified in the Articles of the votes of each class or series of shares which were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or
 - (b) a resolution consented to in writing by

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

PART II

Komentář: Page: 19

Constitution of Companies

3. Incorporation

- (1) Subject to the requirements of this Act, any person may singly or jointly with others, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.
- (2) A company incorporated under this Act may be either -
 - (a) a company limited by shares;
 - (b) a company limited by guarantee;
 - (c) an unlimited liability company;
 - (d) a company limited both by shares and by guarantee; or
 - (e) a limited life company.
- (3) Any reference in this Act to a company limited by shares or to a company limited by guarantee shall, unless the context otherwise requires, include a company limited both by shares and by guarantee.

4. Restriction on incorporation

No company shall be incorporated under this Act unless immediately upon its incorporation the company is an international company.

5. Requirements of an international company

- (1) For the purposes of this Act, an international company is a company that does not
 - (a) subject to subsection (2), carry on business with persons resident in the Republic of Mauritius;
 - (b) carry on any dealings in Mauritian rupees;

- (c) subject to subsection (3), own any interest in immovable property situated in the Republic of Mauritius;
 - (d) hold any share, debenture, security or any interest in any company incorporated under the Companies Act 1984, or in any society or partnership under the Code Napoleon or the Code de Commerce, or in any body corporate or association formed or registered under an enactment in force in the Republic of Mauritius, other than in an offshore company;
 - (e) raise capital by means of an offer to the public of any securities or units in the company for subscription, sale or exchange;
 - (f) carry on any banking, insurance or a reinsurance business;
 - (g) carry on the business of providing the registered office or of providing nominee services for companies, or of providing trusteeship services;
 - (h) carry on the business of holding or managing or otherwise deal with a collective investment fund or scheme as a professional functionary;
 - (i) have as beneficial owner of any of its shares or as a member a person resident in Mauritius.
- (2) For the purpose of subsection (1) (a), an international company shall not be treated as carrying on business with persons resident in Mauritius by reason only that -
- (a) it makes or maintains deposits or otherwise deals with an offshore bank;
 - (b) it makes or maintains professional contact with law practitioners, accountants, bookkeepers, management companies, trust companies, administration companies, investment advisers or other similar persons carrying on business and providing financial and other related services within the Republic of Mauritius ;
 - (c) it opens and maintains with a domestic bank an account in Mauritian rupees for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;
 - (d) it prepares or maintains books and records within the Republic of Mauritius;
 - (e) it holds within the Republic of Mauritius, meetings of its directors or members;
 - (f) it holds shares, debt obligations or other securities in or otherwise deals with another company incorporated under this Act.

- (g) it owns or manages a vessel registered in the Republic of Mauritius under the Merchant Shipping Act 1986.
- (3) For the purposes of subsection 1(c), an international company shall not be treated as owning an interest in real property by reason of its occupation of property for use as an office from which to communicate with members, or where books and records of the company are prepared or maintained.
- (4) For the purposes of subsection (1)(g), an international company shall not be regarded as carrying on the business of acting as a trustee company or of providing trusteeship services when acting as the trustee or one of the trustees of not more than three trusts.

6. Effect of failure to satisfy requirements of section 5

- (1) Notwithstanding its certificate of incorporation issued under section 14, and without prejudice to the operation of section 110, where a company -
 - (a) is incorporated under this Act in breach of section 4; or
 - (b) fails after proper incorporation under this Act to satisfy the requirements prescribed under section 5 for an international company for a continuous period of more than 30 days;
 - the company shall notify the Registrar of -
 - (i) the breach under paragraph (a) forthwith;
 - (ii) the failure under paragraph (b), on the expiry of the period of 30 days.
- (2) A company who contravenes subsection (1) shall commit an offence, and shall on conviction be liable to a fine of Rs 1 000 for each day or part thereof during which the contravention continues.

7. Personal liability

No member, director, officer, agent or liquidator of a company incorporated under this Act shall be liable for any debt, obligation or default of the company, unless

- (a) it is proved that he did not act in good faith;
- (b) it is specifically provided in this Act or under any other enactment;
- (c) he is liable for his own personal conduct or acts.

8. Business objects or purposes

A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other enactment in force in the Republic of Mauritius.

9. Powers

- (1) Subject to any limitations in its Memorandum or Articles, and to this Act, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and to engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:
- (a) issue registered shares or shares issued to bearer or both;
 - (b) issue the following:
 - (i) voting shares,
 - (ii) non-voting shares
 - (iii) shares that may have more or less than one vote per share,
 - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events, and
 - (v) shares that may be voted only when held by persons who meet specified requirements;
 - (vi) no par value shares;
 - (vii) unnumbered shares;
 - (c) issue common shares, preferred shares, limited shares or redeemable shares;
 - (d) issue shares that entitle participation only in certain assets;
 - (e) issue shares in any one or more currencies;
 - (f) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
 - (g) issue securities that, at the option of the holder or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;
 - (h) subject to subsection (2), issue shares subject to forfeiture by the company in the circumstances or in the event provided in the Articles or in the terms of the issue;

- (i) purchase, redeem or otherwise acquire and hold its own shares;
 - (j) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
 - (k) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company.
- (2) Notwithstanding the power conferred under subsection (1)(h) -
- (a) an amendment of the Articles to make shares subject to forfeiture which were not originally so issued shall be void -
 - (i) unless the holders of these shares are given an opportunity to object to the amendment; or
 - (ii) where the holders of the shares, after being notified, object to the amendment;
 - (b) where a forfeiture by itself or in combination with any other previous forfeitures results in the reduction of the number of members of the company to less than one member, the last of the forfeitures shall be for all purposes of no effect .
- (3) For purposes of subsection (1)(k), notwithstanding any other provision of this Act or any other enactment or any rule of law to the contrary, but subject to any law relating to privileges and to the protection of creditors, the directors may
- (a) cause the company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity; and
 - (b) with respect to the transfer, provide that the company, its creditors, members or any person having a direct or indirect interest in the company or any of them, may be the beneficiaries, creditors, members, certificate-holders, partners or holders of any other similar interest.
- (4) The rights or interest of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (2), and those rights or interests may be pleaded against any transferee in any such transfer.

10. Validity of acts of company

- (1) Subject to subsection (2), no act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid

by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property.

- (2) The lack of capacity or power referred to in subsection (1) may be invoked in proceedings by:
- (a) a member against the company to prohibit the performance of any act or the transfer of real personal property by or to the company; or
 - (b) the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorised act.
- (3) For purposes of subsection (2)(a), where
- (a) the unauthorised act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;
 - (b) all the parties to the contract are parties to the proceedings; and
 - (c) it appears fair and reasonable to do so,
- the Court may set aside and prohibit the performance of the contract and award to the company or to the other parties to the contract such compensation as may be reasonable.
- (4) In determining the amount of compensation under subsection (3), the Court shall not take into account anticipated profits to be derived from the performance of the contract.

11. Name

- (1) (a) The word "Limited", "Corporation", "Incorporated", "Public Limited Company", "Société Anonyme", "Société Anonyme à Responsabilité Limitée", or "Sociedad Anonima", "Berhad", "Proprietary", "Namloze Vennootschap", "Besloten Vennootschap", "Aktiengesellschaft" or the abbreviation "Ltd", "Corp", "Inc" "Plc" "S.A.", "S.A.R.L.", "Bhd", "Pty", "N.V.", "B.V.", "A.G." or "LLC." may, either in full or in its abbreviated form, be part of the name of every company incorporated under this Act.
- (b) A company incorporated under the laws of a jurisdiction other than the Republic of Mauritius and continued as a company incorporated under this Act may use the name designated in the Articles of continuation.
 - (c) Notwithstanding paragraph (a), a company may in lieu of any of the words or abbreviations set out in that paragraph, have as part of its name any

other words or popular abbreviations of those words in any language being words or abbreviations approved by the Registrar as connoting the existence of a body corporate as distinct from any other person or entity and such words or abbreviation may appear at the beginning, the end or elsewhere in the name of the company in accordance with common practice.

- (2) No company shall be incorporated under this Act under a name that
- (a) is identical with that of a statutory corporation or that under which a company in existence is already incorporated under this Act or so nearly resembles the name as to be likely to deceive, except where the corporation or the company in existence gives its consent; or
 - (b) except with the approval of the Registrar in writing, contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Government:", "Imperial", "Insurance", "Municipal", "Royal", "State", "Trust", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of the President of the Republic of Mauritius or the Government of the Republic of Mauritius;
 - (c) is indecent, offensive or, in the opinion of the Registrar, objectionable or misleading.
- (3) A company may change its name by an amendment of its Memorandum in accordance with section 16.
- (4) Where a company is incorporated under a name that
- (a) is identical with a name under which a company in existence was incorporated under this Act, or
 - (b) so nearly resembles the name as to be likely to deceive;
- the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name.
- (5) Where a company fails to comply with a notice under subsection (4) within 60 days from the date of the service, the Registrar shall
- (a) amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and
 - (b) cause the notice of the change of name to be published in the Gazette.

- (6) Subject to subsections (2) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and shall issue a certificate of change of name, confirming the change of name.
- (7) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced against a company by its former name may be continued against it by its new name.
- (8) Subject to subsection (2) the Registrar may, upon request made by any person, reserve for 90 days a name for future adoption by a company under this Act.
- (9) The Registrar may issue guidelines on the reservation and adoption of names.

12 Memorandum

- (1) The Memorandum must include
 - (a) the name of the company;
 - (b) the address within the Republic of Mauritius of the registered office of the company;
 - (c) the name and address within the Republic of Mauritius of the registered agent of the company;
 - (d) subject to subsection (2), the objects or purposes for which the company is to be incorporated;
 - (e) the currency, being non-Mauritian rupee, in which shares in the company shall be issued;
 - (f) in the case of a company limited by shares, a statement of the authorised capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
 - (g) in the case of a company limited by guarantee, a statement that each member undertakes to contribute to the assets of the company in the event of a winding up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributors among themselves, such amounts as may be required, not exceeding an amount to be specified in the memorandum;
 - (h) in the case of a company limited both by shares and by guarantee, the statements referred to in paragraphs (f) and (g);

- (i) in the case of an unlimited company, a statement that the liability of the members is unlimited;
 - (j) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and where applicable, a statement that shares may be without par value;
 - (k) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, in which case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;
 - (l) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as shares issued to bearer, unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or to bearer, and in which case an express grant of such authority as may be desired shall be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of directors;
 - (m) a statement whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares; and
 - (n) where shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer.
 - (o) a statement that the company shall not-
 - (i) raise capital by means of an offer to the public of any securities or units in the company for subscription, sale or exchange;
 - (ii) carry on any banking, insurance or a reinsurance business; nor any business of providing nominee or trusteeship services, nor the business of holding or managing collective investment fund as a professional functionary.
- (2) For purposes of subsection (1)(d), where the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law in force in the Republic of Mauritius, the effect of that statement is to make all acts

and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

- (3) The Memorandum shall be subscribed to by the registered agent named in the Memorandum and may be signed by such other persons who wish to be subscribers.
- (4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum on the part of himself, his heirs, executor and administrators, a covenant to observe the provisions of the Memorandum subject to this Act.
- (5) The Minister may by regulations provide for a specimen form of Memorandum which may be used for the incorporation of a company under this Act.

13. Articles

- (1) Where the Articles are not submitted for registration with the Memorandum, they shall be submitted for registration within 30 days following the date of incorporation.
- (2) The Articles shall be subscribed to by the registered agent named in the Memorandum and may be signed by such persons who wish to be subscribers or members as the case may be.
- (3) The Articles, when registered, bind the company and its Members from time to time to the same extent as if each member had subscribed his name and affixed his, seal thereto and as if there were contained in the Articles, on the part of himself, his heir, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.
- (4) The Minister may provide for specimen Articles which may be adopted as regulations by a company incorporated under this Act by reference in the Memorandum .

14. Registration

- (1) For the purpose of registration, the Memorandum, whether accompanied by the Articles or not, shall be submitted in two originals to the Registrar by the registered agent mentioned in the Memorandum who shall ensure to the best of his knowledge and ability that the requirements of this Act in respect of registration have been complied with.

- (2) The Registrar shall retain and register one set of the original Memorandum and the Articles, if any, in the Register.
- (3) Upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.
- (4) Except for the reservation of name under section 11(8), any document required or permitted to be lodged or filed with the Registrar in respect of
 - (a) the registration of a Memorandum and Articles of a company under this Act, and any amendment to the Memorandum and Articles; and
 - (b) any register of members or register of directors or register of mortgages which the company elects to register with the Registrar, shall be lodged with the Registrar through the registered agent of the company.

15. Certificate of Incorporation

- (1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum with the full capacity of an individual, who is *sui juris*, subject to any limitations set out in the Memorandum and in this Act.
- (2) Without prejudice to section 6, a certificate of incorporation of a company incorporated under this Act issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of incorporation .

16. Amendment of Memorandum and Articles

- (1) Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.
- (2) The company shall within 30 days submit a copy, authenticated in accordance with section 83(1) as being a true copy, of any resolution of members or of directors amending the Memorandum or Articles of the company to the Registrar who shall retain and register the copy of the amending resolution.
- (3) An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.
- (4) A company which contravenes subsection (2) shall commit an offence and shall on conviction be liable to a fine of Rs 100 for each day or part thereof during which the contravention continues.

- (5) A director who knowingly permits the contravention of subsection (2) shall commit an offence and shall on conviction be liable to a fine of Rs 100 for each day or part thereof during which the contravention continues.

17. Copies of Memorandum and Articles to members

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

PART III
Capital and Dividends

18. Shares to be fully paid

A share in a company incorporated under this Act shall

- (a) not be issued until the consideration in respect of the share is fully paid;
- (b) when issued, be deemed for all purposes to be fully paid and non- assessable.

19. Kind of consideration for shares

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

20. Amount of consideration for shares

- (1) (a) The amount of consideration for shares with par value shall not be less than the par value.
 - (b) Subject to any limitations in the Memorandum or Articles, shares other than shares with par value in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors.
 - (c) Unless a question of law is involved, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue of a share is conclusive.
- (2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

21. Power to allot shares

Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the unissued shares and treasury shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights

previously conferred on the holders of any existing shares or class or series of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.

22. Fractional Shares

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

23. Authorised capital in several currencies

Where the authorised capital, if any, of a company incorporated under this Act is stated in more than one currency, the par value of the shares, if any, shall be expressed in the same currencies.

24. Capital and surplus accounts

- (1) Upon the issue by a company incorporated under this Act of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.
- (2) Subject to any limitations in the Memorandum or Articles, where a company incorporated under this Act issues a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.
- (3) Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share is added to surplus.

25. Dividend of Shares

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

- (2) In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.
- (3) In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.
- (4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having proportionately smaller par value does not constitute a dividend of shares.

26. Increase or reduction of authorized capital

- (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, amend its Memorandum to increase or reduce its authorised capital.
- (2) For the purpose of subsection (1), the company may
 - (a) increase or reduce the number of shares which the company may issue;
 - (b) increase or reduce the par value of any of its shares; or
 - (c) effect any combination of the provisions set out under paragraphs (a) and (b).
- (3) Where a company reduces its authorised capital under subsection (1), for the purpose of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.
- (4) A company shall inform the Registrar in writing of any increase or decrease of its authorised capital.

27. Division and combination of shares

- (1) A company incorporated under this Act may amend its Memorandum
 - (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

- (b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.
- (2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares shall be equal to the aggregate par value of the original shares.

28. Character of a share

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

29. Share certificates

- (1) A company incorporated under this Act shall state in its Articles whether or not certificates in respect of its shares shall be issued.
- (2) Where a company incorporated under this Act issues certificates in respect of its shares, the certificates shall be -
 - (a) signed by two directors or two officers of the company, or by one director and one officer; or
 - (b) under the common seal of the company, if the company has one, evidenced by the signature of any director or officer of the company.
- (3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is **prima facie** evidence of the title of the Member to the share specified therein.
- (4) The Articles of a company may provide for the signatures or common seal to be facsimiles or printed.

30. Share register

- (1) A company incorporated under this Act, other than a company limited by guarantee, shall cause to be kept one or more registers to be known as share registers containing
 - (a) the names and addresses of the persons who hold registered shares in the company;
 - (b) the number of each class and series of registered shares held by each person;

- (c) the date on which the name of each person was entered in the share register;
 - (d) the date on which any person ceased to be a member;
 - (e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and
 - (f) with respect to each certificate for shares issued to bearer,
 - (i) the identifying number of the certificate;
 - (ii) the number of each class or series of shares issued to bearer specified therein; and
 - (iii) the date of issue of the certificate;
- (2) A company limited by guarantee incorporated under this Act shall cause to be kept one or more registers of members in which shall be entered :
- (a) the names and addresses of the members of the company;
 - (b) the date when a person ceases to be a member; and
 - (c) the date of each entry in the register.
- (3) Notwithstanding subsections(1) and (2), the company may delete from the register information relating to persons who are no longer members or information relating to shares issued to bearer that have been cancelled.
- (4) Subject to subsection (5), the share register may be in such form as the directors may approve.
- (5) Where the register is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (6) The register is *prima facie* evidence of any matters directed or authorised by this Act to be contained in the register.
- (7) A company that contravenes this section shall commit an offence and shall on conviction be liable to a fine of Rs 500 for each day or part thereof during which the contravention continues.
- (8) A director who knowingly permits the contravention of this section shall commit an offence and shall on conviction be liable to a fine of Rs 500 for each day or part thereof during which the contravention continues.

31. Rectification of register

- (1) Where -
- (a) information that is required to be entered in the register under section 30 is omitted therefrom or inaccurately entered therein; or
 - (b) there is unreasonable delay in entering the information in the share register,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified.

- (2) In any proceedings under subsection (1), the Court may -
- (a) order the rectification of the register, and direct the company to pay all costs of the application and any damages the applicant may have sustained;
 - (b) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register, whether the question arises between
 - (i) two or more members or alleged member ; or
 - (ii) between members or alleged members and the company; and
 - (iii) determine any question that may be necessary or expedient to be determined for the rectification of the register.

32. Transfer of registered shares

- (1) Notwithstanding any other enactment, registered shares of a company incorporated under this Act may, subject to any limitations in the Memorandum or Articles, be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
- (2) In the absence of a written instrument of transfer referred to in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (3) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the share register.
- (4) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act shall, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.

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

33. Transfer of bearer shares

A share issued to bearer is transferable by delivery of the certificate relating to the share.

34. Mortgages and charges on shares

- (1) The instrument creating a mortgage, charge or pledge of a share of a company incorporated under this Act shall-
- (a) be in writing, signed by or with the authority of the registered owner of the share, or of the holder of the bearer share, to which the mortgage, charge or pledge relates;
 - (b) clearly indicate -
 - (i) the intention to create a mortgage, charge or lien; and
 - (ii) the amount secured by the charge or pledge or how that amount is to be calculated.
- (2) When the certificate of a bearer share is deposited with another person for the purpose of the mortgage, charge or pledge, the deposit shall not operate as a transfer of title in the bearer share except in application of the law governing realisation of the security.

35. Seizure

- (1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside the Republic of Mauritius -
- (a) by or in connection with a nationalisation, expropriation, confiscation, coercion, force or duress, or similar action; or
 - (b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge;

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

- (2) Without prejudice to subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the Court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interests.
- (3) The Court may upon application made to it under subsections (1) or (2),
 - (a) grant such relief as it considers fair and equitable; and
 - (b) order that any shares of or other interests in the company vest in such trustees as the Court may appoint upon such trusts and for such purposes as the Court thinks fit.

36. Acquisition of shares

- (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.
- (2) Subject to subsection (1), a company incorporated under this Act may not purchase, redeem, or otherwise acquire its own shares without the consent of the members whose shares are to be purchased, redeemed or otherwise acquired except-
 - (a) under the provisions of the Memorandum or Articles of the company;
 - (b) by virtue of the terms and conditions under which the shares were issued;
 - (c) where expressly allowed under this Act.
- (3) No purchase, redemption or other acquisition permitted under this section, shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition -

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
 - (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital.
- (4) Unless a question of law is involved, and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company shall be conclusive.
- (5) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired -
- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company, including newly issued shares;
 - (b) by virtue of a transfer of capital pursuant to section 38 (1)(b)(iii);
 - (c) by virtue of a redemption under section 93(1)(d); and
 - (d) pursuant to an order by the Court.
- (6) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held in treasury shares.
- (7) (a) A share that is purchased, redeemed or otherwise acquired out of capital in accordance with section 38, shall be cancelled; and
- (b) on cancellation of the share, the amount included as capital of the company in respect to that share shall be deducted from the capital of the company.

37. Treasury shares disabled

Where shares in a company incorporated under this Act are held by -

- (a) the company as treasury shares; or
- (b) another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of the other company,

the shares of the first company shall not be -

- (i) entitled to vote or to have dividends paid on those shares; and

- (ii) treated as outstanding for any purpose under this Act other than the purpose of determining the capital of the first company.

38. Increase or reduction of share capital

- (1) Subject to any limitation in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act may, by resolution of directors, be
 - (a) increased by transferring an amount out of the surplus of the company to capital; or
 - (b) reduced by -
 - (i) returning to members any amount received by the company upon the issue of any of its shares, the amount being surplus to the requirements of the company,
 - (ii) cancelling any capital that is lost or not represented by assets having a realisable value, or
 - (iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire.
- (2) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of -
 - (a) the aggregate par value of
 - (i) all outstanding shares with par value, and
 - (ii) all shares with par value held by the company as treasury shares; and
 - (b) the aggregate of the amounts designated as capital of
 - (i) all outstanding shares without par value, and
 - (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

- (3) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction
 - (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
 - (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital.
- (4) Unless a question of law is involved, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

39. Dividends

- (1) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.
- (2) Dividends shall only be declared and paid out of surplus.
- (3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend,
 - (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
 - (b) the realisable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital;
- (4) Unless a question of law is involved, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive.

40. Appreciation of assets

- (a) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, include in the computation of

surplus for any purpose under this Act the net unrealised appreciation of the assets of the company.

- (b) In the absence of fraud, the decision of the directors under paragraph (a) as to the value of the assets is conclusive, unless a question of law is involved.

PART IV

Registered Office and Agent

41. Registered Office

A company incorporated under this Act shall at all times have a registered office in the Republic of Mauritius.

42. Registered agent

- (1) A company incorporated under this Act shall at all times have a registered agent in the Republic of Mauritius.
- (2) No person or company shall act as a registered agent of a company incorporated under this Act except -
- (a) a body corporate holding a management licence under section 23 of the Mauritius Offshore Business Activities Act 1992;
 - (b) an offshore bank;
 - (c) such person as may be approved by the Mauritius Offshore Business Activities Authority.

43. Change of registered office or registered agent

A company incorporated under this Act, may by a resolution of directors amend its Memorandum to change the address of its registered office or to change its registered agent.

44. Resignation of registered agent

- (1) Where a registered agent proposes to resign as registered agent in respect of an international company, and is unable to agree with the company on his replacement, he shall give notice in writing at least 60 days before his resignation -
- (a) to the director or officer of the company at his last known address;
 - (b) where he has no notice or knowledge of any change in the name and address of any director or officer of the international company from the one on his records, to the person from whom he last received instructions concerning the company.
- (2) (a) A copy of the letter of resignation shall be submitted forthwith to the Registrar.
- (b) The resignation of the registered agent shall take effect on the sixtieth day after submission of the letter of resignation to the Registrar.
- (3) Where -
- (a) before the expiry of the notice by the registered agent under subsection (1) the international company fails to inform the Registrar of any change of name and address of his registered agent, or
 - (b) the Registrar has reasonable cause to believe that any international company does not have, or is likely to find itself without a registered agent qualified under section 42,
- the Registrar shall cause to be published in the Gazette a notice that the company will be struck off the International Register unless the company notifies him within 30 days from the publication of the notice of the name and address of his registered agent.
- (4) The Registrar shall -
- (a) strike off the International Register the name of an international company which fails to comply with a notice under subsection (3); and
 - (b) cause to be published in the Gazette a notice to that effect.

45. Consequences of striking off under section 44

An international company which has been struck off the International Register under section 44 shall remain liable for all claims, debts, liabilities and obligations of the company, and the striking-off shall not affect the liability of any of its members, directors, officers or agents.

46. Penalty for contravention of sections 41 and 42

- (1) (a) A company that contravenes sections 41 or 42;
 - (b) a director who knowingly permits a contravention under paragraph(a); shall commit an offence and shall on conviction be liable to a fine of Rs 100 for each day of part thereof during which the contravention continues.
- (2) Without prejudice to subsection(1), where a contravention by a company under subsection(1) continues for a period exceeding 30 days, the company shall be deemed to have commenced to wind up and dissolve under section 100(2) as if a resolution to that effect has been duly taken.

PART V**Directors, Officers, Agents and Liquidators****47. Management by directors**

Subject to section 110 (3) in its application to Limited Life Companies, and subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

48. Unanimous shareholder agreement

- (1) Notwithstanding any other provision of this Act, all the shareholders or members of an international company among themselves, or all the shareholders or members of an international company, may by agreement in writing restrict in whole or in part the discretion and powers of the directors of the company to manage the business and affairs of the company and may confer on any person who is a party to such agreement, whether or not a shareholder, a member or director of the company, such powers and discretions as they may think fit.
- (2) A person who is a party to a unanimous shareholder agreement has, to the extent that such agreement so provides, all the rights, powers and duties and incurs all the liabilities of a director of the company to which the agreement relates, and the director is to such extent relieved of his duties and liabilities.
- (3) Where a person is the holder or registered owner of all the issued shares of an international company makes a declaration in writing that restricts in whole or in part the discretion and powers of the director to manage the business and affairs of the company, the declaration shall be deemed to be a unanimous shareholder agreement.
- (4) A unanimous shareholder agreement shall not have effect until all the directors of the company shall have been notified of its contents.

49. Election, term and removal of directors

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

- (2) Where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may elect directors for such term as the directors may determine.
- (3) Each director holds office until his successor takes office or until his death, resignation or removal, whichever is earlier.
- (4) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, a director may -
 - (a) be removed from office by a resolution of members or by a resolution of directors; and
 - (b) resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.
- (5) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

50. Optional register of directors

- (1) A company incorporated under this Act may keep a register to be known as a register of directors containing-
 - (a) the names and addresses of the persons who are directors of the company;
 - (b) the date on which each person whose name is entered on the register was appointed as a director of the company; and
 - (c) the date on which each person named as a director ceased to be a director of the company.
- (2)
 - (a) The register of directors may be in such form as the directors approve.
 - (b) Where the register is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

51 Disqualification of directors

- (1) No person who is in the Republic of Mauritius or elsewhere an undischarged bankrupt or insolvent or convicted of an offence -

- (a) in connection with the promotion, formation or management of a company or other type of body corporate; or
- (b) involving fraud or dishonesty punishable by imprisonment for a term of three months or more;

shall act as director or promoter of, or be in any way whether directly or indirectly concerned or take part in the management of an international company, except with leave of the Court.

- (2) A person applying for leave of the Court for removal of the disqualification under this section, shall serve notice of his application on the Registrar who may be represented at the hearing of and oppose the granting of the application.
- (3) Any person who contravenes subsection (1) shall commit an offence and shall on conviction be liable to a fine not exceeding 300 000 rupees and to imprisonment for a term not exceeding 8 years.

52. Number of directors

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

53. Powers of directors

The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, or in a unanimous shareholder agreement.

54. Emoluments of directors

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

55. Committees of directors

- (1) The directors may by a resolution of directors designate one or more committees each consisting of one or more directors.
- (2) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, each committee has such powers and authority of the

directors including the power and authority to affix the common seal of the company as are set forth in the resolution of directors establishing the committee

- (3) Notwithstanding subsection (2), no committee shall have any power or authority with respect to the matters requiring a resolution of directors under sections 49 and 62.

56. Meetings of directors

- (1) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside the Republic of Mauritius as the directors may determine to be necessary or desirable.
- (2) A director shall be deemed to be present at a meeting of directors if
- (a) he participates by telephone or other electronic means; and
 - (b) all directors participating in the meeting are able to hear each other.

57. Notice of meetings of directors

- (1) Subject to a requirement in the Memorandum or Articles or in a unanimous shareholder agreement, to give longer notice, a director shall be given not less than 3 days notice of meetings of directors.
- (2) Notwithstanding subsection (1), subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

58. Quorum for meetings of directors

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

59. Consents of directors

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

60. Alternates for directors

- (1) Subject to any limitations in the Memorandum or Articles, or in a unanimous shareholder agreement, a director may by a written instrument appoint an alternate who need not be a director.
- (2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

61. Meeting of single director or single member

Any requirement in this Act or in the Articles for a meeting of directors for any purpose shall, in the case of an international company having a single director or a single member, be satisfied where the single director or the single member passes a resolution in lieu of such meeting.

62. Officers and agents

- (1) The directors may, by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.
- (2) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles or in the resolution of directors appointing the officer or agent.
- (3) Notwithstanding the generality of subsection (2), no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under this Act.
- (4) The directors may remove an officer or agent appointed under subsection (1), revoke or vary a power conferred on him under subsection (2).

63. Standard of care

- (1) Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view

to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

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

64. Reliance on records and reports

Every director, officer, agent and liquidator of company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 30, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 75, and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

65. Conflicts of interest

- (1) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, where the requirements of subsection (2) or (3) are satisfied, an agreement or transaction between
- (a) a company incorporated under this Act; and
 - (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,
- is not void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.
- (2) An agreement or transaction referred to in subsection (1) is valid if
- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at the meeting of members; and
 - (b) the agreement or transaction is approved or ratified by a resolution of members.

- (3) Subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining that the meeting is duly constituted in accordance with section 58 or otherwise.

66. Indemnification

- (1) Subject to subsection (2), and to any limitations in its Memorandum or Articles or in a unanimous shareholder agreement, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who
- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the company; or
 - (b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.
- (4) The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and

amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

67. Insurance

A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, a registered agent, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, a registered agent, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 66(1).

PART VI**Protection of Members and Creditors****68. Meetings of members**

- (1) Subject to any limitations in the Memorandum or Articles or in any unanimous shareholder agreement, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside the Republic of Mauritius as the directors consider necessary or desirable.
- (2) Subject to a provision in the Memorandum or Articles or in a unanimous shareholder agreement for a lesser percentage, upon the written request of members holding more than 50 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.
- (3) Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if
 - (a) he participates by telephone or other electronic means; and
 - (b) all members participating in the meeting are able to hear each other.
- (4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.
- (5) In respect of joint ownership of shares,
 - (a) each of the persons holding shares jointly may be present in person or by proxy at a meeting of members and speak as a member;
 - (b) any one of the co-owners present in person or by proxy may vote on behalf of all of them; and
 - (c) where two or more of the co-owners are present in person or by proxy, they must vote as one.

69. Notice of meetings of members

- (1) Subject to a requirement in the Memorandum or Articles or in a unanimous shareholder agreement to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 30 and are entitled to vote at the meeting.

- (2) Notwithstanding subsection (1), and subject to any limitations in the Memorandum or Articles or in a unanimous shareholder agreement, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 per cent majority or such lesser majority as may be specified in the Memorandum or Articles of
- (a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or
 - (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,
- have waived notice of the meeting; and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

70. Quorum for meetings of members

The quorum for a meeting of members for purposes of a resolution of members is that fixed by the Memorandum or Articles, but where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy one half of the votes of the shares of each class or series of shares entitled to vote as a class or series on these shares and the same proportion of the votes of the remaining shares entitled to vote thereon.

71. Voting by members

- (1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.
- (2) The directors of a company incorporated under this Act may fix the date on which notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

72. Consent of members

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

73. Service of notice on members

- (1) Any notice, information or written statement required under this Act to be given by a company incorporated under this Act on members shall be served
- (a) in the case of members holding registered shares,
 - (i) in the manner prescribed in the Memorandum or Articles as the case may be, or
 - (ii) in the absence of a provision in the Memorandum or Articles by personal service or by mail addressed to each member at the address shown in the share register;
 - (b) in the case of members holding shares issued to bearer,
 - (i) in the absence of a provision in the Memorandum or Articles ; or
 - (ii) where the notice, information or written statement can no longer be served as specified in the Memorandum and Articles,
 by publication of the notice, information or written statement in a newspaper circulated in the Republic of Mauritius
- (2) Subject to a requirement in the Memorandum or Articles, or in a unanimous shareholder agreement, to give a specific length of notice, the directors shall give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.
- (3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

74. Service of process on company

- (1) Any summons, notice, order, document process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered mail addressed to the company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.
- (2) Service of any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement was -
- (a) mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and

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

75. Books, records and common seal

- (1) A company incorporated under this Act shall keep -
- (a) minutes of all meetings of, and copies of all resolutions consented to by -
 - (i) directors,
 - (ii) members,
 - (iii) committees of directors,
 - (iv) committees of officers,
 - (v) committees of members;
 - (b) such accounts and other records as the directors consider necessary or desirable in order to reflect the financial position of the company; and
 - (c) a share register or a register of members in accordance with section 30 ;
 - (d) where the company elects to do so,
 - (i) a register of all its directors and officers; and
 - (ii) a register of mortgages and charges.
- (2) The books, records, minutes and the register referred to in subsection (1), shall be kept at the registered office of the company or at such other place as the directors may determine.
- (3) The registered agent of the international company shall be notified of the full address of the place, being a place other than the registered office of the company, where the books, records, minutes and the register of directors and officers are kept.
- (4) Where an international company is required by its Articles to have a common seal, an imprint of the seal shall be kept at the registered office of the company.
- (5) (a) A company that contravenes this section;
 (b) a director who knowingly permits a contravention of paragraph (a); shall commit an offence and shall on conviction be liable to a fine of Rs 500 for each day or part thereof during which the contravention continues.

76. Optional register of mortgages and charges

- (1) Where a company incorporated under this Act creates a mortgage, charge, pledge or other encumbrance over any of its assets wherever situated, it shall be governed

by the applicable law or the law of the jurisdiction specified by the parties in the instrument creating the mortgage, charge, pledge or other encumbrance.

- (2) A company incorporated under this Act may maintain a register of mortgages and charges in which shall be entered in respect of each mortgage, charge, pledge and other encumbrance, the following particulars-
- (a) the sum secured;
 - (b) the assets secured;
 - (c) the name and address of the mortgagee, chargee, pledgee or of the person in favour of whom the encumbrance is created;
 - (d) the date of creation of the mortgage, charge, pledge or other encumbrance; and
 - (e) the date on which the particulars specified in paragraphs (a) to (d) in respect of the mortgage, charge, pledge or other encumbrance are entered in the register.
- (3) Where an application is lodged before a Court in the Republic of Mauritius for the purpose of enforcing this Act, priorities, if any, among the mortgages, charges, pledges or other encumbrances shall, notwithstanding any other enactment or rule of law, be determined in accordance with the dates of entry in the register of mortgages and charges kept under subsection (2).

77. Inspection of books and records

- (1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing, specifying the purposes, to inspect during normal business hours the share register or the register of members of the company, the register of directors, the register of mortgages and charges or the books, records, minutes and consents kept by the company and to take copies or extracts therefrom.
- (2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the member's interest as a member.
- (3) Where a request under subsection (1) is submitted by an attorney on behalf of a member, the request shall be accompanied by a power of attorney authorizing the attorney to act for the member.

- (4) Where the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.
- (5) On refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the Court for an order to allow the inspection.

78. Contracts generally

- (1)
 - (a) A contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal, of the company, if it has one, and may, in the same manner, be varied or discharged.
 - (b) A contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.
 - (c) a contract that, if entered into between individuals, is, valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.
- (2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.
- (3) Without prejudice to subsection (1)(a), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised officer or agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

79. Contracts before incorporation

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

- (b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).
- (2) Within a reasonable time after a company incorporated under this Act comes into existence, the company may by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.
- (3) Where a company adopts a contract under subsection (2),
 - (a) the company is bound by and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and
 - (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

80. Contracts for payment or transfer

- (1) Where a contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situated, entered into by a company incorporated under this Act, designates a payee or beneficiary to receive the payment or property on
 - (a) the death of the person making the designation;
 - (b) the death of another person; or
 - (c) the happening of any other event specified in the contract, agreement, deed or other instrument, the payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by operation of the provisions of the Code Napoleon, or any other law or rule of law in the Republic of Mauritius or elsewhere governing the transfer of property by will, gift or intestacy.
- (2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that
 - (a) the designation is revocable or subject to change; or
 - (b) the claim or property is

- (i) not yet payable or transferable, as the case may be, at the time the designation is made, or
- (ii) subject to withdrawal, collection or assignment by the person making the designation.

81. Notes and bills of exchange

- (1) A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company
 - (a) by or on behalf or on account of the company; or
 - (b) by a person acting under the express or implied authority of the company.
- (2) Where an endorsement is made in accordance with subsection (1), the person signing the endorsement is not liable on the endorsement.

82. Power of Attorney

- (1) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorise a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.
- (2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1) whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

83. Authentication or attestation

- (1) A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorised officer or agent of the company, and need not be under its common seal.
- (2) Where the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company, the company is bound by the document.

84. Company without members

Where at any time a company incorporated under this Act has no member, any person doing business in the name of or on behalf of the company is personally liable for the

payment of all debts of the company contracted during the time and the person may be sued therefore without joinder in the proceedings of any other person.

PART VII**Merger, Consolidation, Sale of Assets,
Forced Redemptions, Arrangements and Dissenters****85. Interpretation of Part VII**

In this Part,

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

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

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

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

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

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

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

86. Merger and consolidation

- (1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).
- (2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act 1984 in accordance with subsections (3) to (5), if the surviving company or the consolidated company will satisfy the requirements prescribed for an international company under section 5.
- (3) 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) in respect of each constituent company,
 - (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
 - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
 - (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
 - (d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and
 - (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.
- (4) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

- (5) 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 a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;
 - (b) where 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;
 - (c) where 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;
 - (d) 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 and shall contain
 - (i) the plan of merger or consolidation and in the case of a consolidation any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;
 - (ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
 - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
 - (e) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register; and
 - (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.
- (6) A certificate of merger or consolidation issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

87. Merger with subsidiary

- (1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act 1984 without the authorisation of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an international company under section 5.
- (2) The directors of the parent company must approve a written plan of merger containing
 - (a) the name of each constituent company and the name of the surviving company;
 - (b) in respect to each constituent company, -
 - (i) the designation and number of outstanding shares of each class and series of shares, and
 - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
 - (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.
- (3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.
- (4) A copy of the plan of merger or an outline thereof shall be given 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 Memorandum and Articles of each constituent company were registered by the Registrar; and
 - (c) where the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or

an outline thereof was made available to the members of each subsidiary company.

- (6) The articles of merger shall be submitted to the Registrar who shall retain and register them in the Register.
- (7) On the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.
- (8) A certificate of merger issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the merger.

88. Effect of merger or consolidation

- (1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such a date as is stated in the articles of merger or consolidation, in any case not exceeding 30 days after the date of registration of the merger or consolidation.
- (2) Immediately on the merger or consolidation becoming effective
 - (a) the surviving company or the consolidated company in so far as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects, and purposes of each of the constituent companies;
 - (b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;
 - (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;
 - (d) property of every description, including choses in action, (*droits incorporels*) and the business of each of the constituent companies, vests in the surviving company or the consolidated company; and
 - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs

- (a) no conviction, 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 thereof, is released or impaired by the merger or consolidation; and
 - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but
 - (c) 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
 - (d) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register
- (a)
 - (i) a constituent company that is not the surviving company in a merger; or
 - (ii) a constituent company that participates in a consolidation, and
 - (b) give notice of the striking off in the Gazette.

89. Merger or consolidation with foreign company

- (1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions other than that of the Republic of Mauritius in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the Republic of Mauritius are incorporated.
- (2) In respect of a merger or consolidation under this section, -
 - (a) a company incorporated under this Act shall comply with the provisions of this Act relating to the merger or consolidation, as the case may be, of companies incorporated under this Act, and a company incorporated under the laws of a jurisdiction other than that of the Republic of Mauritius shall comply with the laws of that jurisdiction; and

- (b) where the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction other than that of the Republic of Mauritius, it must submit to the Registrar
 - (i) an agreement that a service of process may be effected on it in the Republic of Mauritius in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;
 - (ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);
 - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
 - (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, such 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 86 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 other than that of the Republic of Mauritius, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 86 except in so far as the laws of the other jurisdiction otherwise provide.
- (4) Where the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date as is stated in the articles of merger or consolidation, in any case not exceeding 30 days from the date of registration of the merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction other than that of the Republic of Mauritius, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

90. Disposition of assets

- (1) In this section, "disposition"-

- (a) means any sale, transfer, lease exchange or other disposition of more than 50 per cent of the assets of a company incorporated under this Act, made otherwise than in the usual or regular course of the business carried out by the company; but
- (b) does not include-
 - (i) a mortgage, charge, pledge or other encumbrance or its realisation or enforcement;
 - (ii) a transfer made in the exercise of the power under section 9(3).
- (2) Subject to the Memorandum and Articles of a company incorporated under this Act, a proposed disposition shall after approval by the directors be submitted to the members who may by resolution at a meeting or by written consent authorise the disposition.
- (3) For the purpose of subsection (2), an outline of the proposal concerning the disposition shall be given to each member of the company whether or not he is entitled to vote or to consent to the disposition together with a notice of the meeting, if a meeting is to be held.

91. Redemption of minority shares

- (1) Subject to any limitations in the Memorandum or Articles,
 - (a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and
 - (b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series, on a merger or consolidation under section 81,

may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.
- (2) 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 within seven days of the receipt of the instruction give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.
- (4) For the purpose of this section, the redemption price shall-

- (a) be a price which the company determines to constitute a fair value for the shares redeemed in accordance with the instruction;
 - (b) on the surrender of the certificates representing the shares, within 30 days of the date of the notice, be paid where agreement is reached on the redemption price.
- (5) Where no agreement is reached on the redemption price within 30 days of the notice under subsection (3), the member whose shares are redeemed shall be treated as a dissenting member to which subsections (9) to (11) of section 93 shall apply.

92. Arrangements

- (1) In this section, "arrangement" means
- (a) a reorganization or reconstruction of a company incorporated under this Act;
 - (b) a separation of two or more businesses carried on by a company incorporated under this Act;
 - (c) any combination of any of the things specified in paragraphs (a) and (b).
- (2) Where the directors of a company incorporated under this Act determine that it is in the best interests of the company or the creditors, or members thereof, the directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.
- (3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.
- (4) (a) The Court may, upon an application made to it 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
- (b) In case of appeal under paragraph (a), notice of appeal must be given within the period of 20 days immediately following the date of the order.
 - (c) In making the order the Court may
 - (i) determine that notice, if any, of the proposed arrangement is to be given to any person;

- (ii) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
 - (iii) 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 88;
 - (iv) conduct a hearing and permit any interested person to appear; and
 - (v) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.
- (5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments to be made thereto.
- (6) The directors of the company, upon confirming the plan of arrangement, shall
 - (a) give notice to the persons to whom the order of the Court requires notice to be given; and
 - (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement must be executed by the company and must contain
 - (a) the plan of arrangement;
 - (b) the order of the Court approving the plan of arrangement; and
 - (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.
- (8) The articles of arrangement must be submitted to the Registrar who shall retain and register them in the Register.
- (9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.

- (10) A certificate of arrangement issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act in respect of the arrangement.
- (11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date as is stated in the articles of arrangement, in any case not exceeding 30 days from the date of registration of the arrangement.

93. Rights of dissenters

- (1) A member of a company incorporated under this Act is entitled to payment of the fair value of his shares upon dissenting from
 - (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or 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 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including
 - (i) a disposition pursuant to an order of the Court having jurisdiction in the matter;
 - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
 - (iii) a transfer pursuant to the power described in section 9(2);
 - (d) a redemption of his shares by the company pursuant to section 86; 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 from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

- (3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.
- (4) Within 20 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 authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.
- (5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating
- (a) his name and address;
 - (b) the number and classes or series of shares in respect of which he dissents; and
 - (c) a demand for payment of the fair value of his shares;
- and a member who elects to dissent from a merger under section 81 shall give to the company a written notice of his decision to elect to dissent within 20 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 81.
- (6) A member who dissents shall do so in respect of all shares that he holds in the company.
- (7) On 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 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, 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 if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company

shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

- (9) Where the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expire,
 - (a) the company and the dissenting member shall jointly designate an appraiser; or
 - (b) in the event that they fail to agree on the designation of an appraiser, each of them shall designate one appraiser and the two designated appraisers together shall designate a third appraiser;
 - (c) the appraiser or the three appraisers by majority decision shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
 - (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.
- (10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.
- (11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

PART VIII**Continuation****94. Continuation**

- (1) A company incorporated under the Companies Act 1984 or incorporated under the laws of a jurisdiction other than that of the jurisdiction of the Republic of Mauritius which -
 - (a) satisfies the requirements prescribed for an international company under section 5, and
 - (b) complies with this Part,may continue as a company incorporated under this Act.
- (2) The articles of continuation containing the particulars set out in subsection (3) shall be approved -
 - (a) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or
 - (b) in such other manner as may be established by the company for exercising the power of the company.

- (3) The articles of continuation shall -
- (a) contain -
- (i) the name of the company and the name under which it is being continued,
 - (ii) the name of the jurisdiction under which it is incorporated,
 - (iii) the date on which it was incorporated,
 - (iv) the information required to be included in a Memorandum under section 12(1) , and
 - (v) the amendments to its Memorandum and Articles or their equivalent that are to be effective upon the registration under this Act of the articles of continuation;
- (b) be submitted, together with a copy of the Memorandum and Articles of the company, or their equivalent, and any evidence satisfactory to the Registrar that the company is in good standing, to the Registrar who shall retain and register them in the Register.

- (4) On payment of the prescribed fee and registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (5) A company incorporated under the laws of a jurisdiction other than that of the Republic of Mauritius is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.
- (6) Any document required to be submitted for the purpose of registering the article of continuation under this section or section 90 shall unless written in the English or French language be accompanied by a certified translation of the document into the English or French language.
- (7) Notwithstanding the Companies Act 1984, a company incorporated under that Act -
 - (a) may, by resolution of the directors, continue the incorporation of the company under this Act; and
 - (b) shall have its name struck off of the register of companies maintained under that Act, and shall cause a notice of the striking off to be published in the Gazette.
- (8)
 - (a) A company registered under this Act may, by resolution of its directors where necessary continue as an offshore company.
 - (b) For the purposes of paragraph (a), the company shall comply with provisions of section 28 of the Mauritius Offshore Business 1992.
 - (c) The company shall cause -
 - (i) its name to be struck off in accordance with the International Companies Act 1994; and
 - (ii) a notice of the striking off to be published in the Gazette.

(Amended: 9/97)

95. Provisional registration

- (1) A company incorporated under the laws of a jurisdiction outside the Republic of Mauritius that is permitted under section 94 (1) to continue as a company incorporated under this Act, may, after complying with subsections (2) and (3) of that section, submit to the Registrar the following documents:
 - (a) articles of continuation, and
 - (b) a written authorisation designating one or more persons who may give notice to the Registrar by telex, telegram, cable, facsimile or by registered mail, that the articles of continuation should become effective.
- (2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1) provide any person with any document referred to in subsection (1) and shall not divulge any information in respect thereof.
- (3) Upon receipt of the notice referred to in subsection (1), the Registrar shall
 - (a) register the documents referred to in subsection (1) in the Register; and
 - (b) issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorisation.
- (5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorisation referred to in subsection (1) by delivering to the Registrar a written notice of rescission.
- (6) Where the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorisation within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the articles of continuation are rescinded.
- (7) A company entitled to submit to the Registrar the documents referred to in subsection (1) may authorise the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.

96. Certificate of Continuation

A certificate of continuation issued by the Registrar under section 94 (4) or under section 95 (3) is prima facie evidence of compliance with all requirements of this Act in respect of continuation.

97. Effect of continuation

- (1) From the time of the issue by the Registrar of a certificate of continuation under section 94 (4) or under section 95 (3)
 - (a) the company to which the certificate relates
 - (i) continues to be a body corporate incorporated under this Act, under the name designated in the articles of continuation,
 - (ii) is capable of exercising all powers of a company incorporated under this Act, and
 - (iii) is no longer to be treated as a company incorporated under the Companies Act 1984 or a company incorporated under the laws of a jurisdiction outside The Republic of Mauritius;
 - (b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;
 - (c) property of every description, including choses in action (droits incorporels) and the business of the company, continue to be vested in the company; and
 - (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.
- (2) Where a company is continued under this Act
 - (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
 - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 94 (4) or under section 95 (3) by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

- (3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 94 (4) or under section 95 (3) in respect to the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.
- (4) Where at the time of the issue by the Registrar of a certificate of continuation under section 94 (4) or under section 95 (3) in respect to the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act
 - (a) the provisions of the Memorandum and Articles shall continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
 - (b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of the issue of the certificate of continuation whichever is the sooner; and
 - (c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

98. Continuation under foreign law

- (1) Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction other than that of the Republic of Mauritius in the manner provided under those laws.
- (2) Where a company incorporated under this Act continues under the laws of a jurisdiction other than that of the Republic of Mauritius, the company shall submit to the Registrar a legal opinion by a person duly qualified in that jurisdiction that -
 - (a) the laws of that jurisdiction permit the continuation; and

- (b) the company has complied with those laws.
- (3) On receiving the legal opinion, the Registrar shall -
- (a) strike the company referred to in the opinion off the international register; and
 - (b) issue a certificate of discontinuance under his hand and seal certifying that the company has ceased to be a company incorporated under this Act; and
 - (c) cause to be published a notice of the striking off in the Gazette.
- (4) Where a company incorporated under this Act is continued under the laws of a jurisdiction other than that of the Republic of Mauritius
- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction other than that of the Republic of Mauritius;
 - (b) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction other than that the Republic of Mauritius; and
 - (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction other than that of the Republic of Mauritius, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent of the company, as the case may be.

PART IX**Winding-up, Dissolution and Striking-Off****99. Compulsory winding-up and dissolution**

A company incorporated under this Act, other than a limited life company registered under Part X, shall commence to wind up and dissolve by a resolution of directors upon

- (a) expiration of such time as may be prescribed in its Memorandum or Articles for its existence; or
- (b) the happening of an event which has been specified in the Memorandum or Articles as an event that shall terminate the existence of the company.

100. Voluntary winding-up and dissolution

- (1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.
- (2) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.

101. Powers of directors in a winding-up and dissolution

Upon the commencement of a winding-up and dissolution required under section 99 or permitted under section 100, the directors may only

- (a) authorise a liquidator, by a resolution of directors, to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and
- (b) determine to rescind the articles of dissolution as permitted under section 106(1)(a).

102. Appointment of liquidator

- (1) A resolution of members or of directors to voluntarily wind up and dissolve a company shall also appoint a liquidator for the purpose of winding up the affairs of the company and distributing the property.
- (2) Where there is no liquidator acting in the case of a voluntary winding up, the Court may,-
 - (a) on the application of a contributory, appoint a liquidator;
 - (b) on good cause shown, remove any liquidator and appoint another one to act in the matter of a voluntary winding up.

103. Duties of liquidator

- (1) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed
 - (a) to identify all assets of the company;
 - (b) to identify all creditors of and claimants against the company;
 - (c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
 - (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
 - (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
 - (f) to send a copy of the statement of account to all members if so required by the plan of dissolution under section 105.
- (2) A transfer, including a prior transfer described in section 9 (2), of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

104. Powers of liquidator

- (1) In order to perform the duties imposed on him under section 103, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power
- (a) to take custody of the assets of the company and, in that connection, to register any property of the company in the name of the liquidator or that of his nominee;
 - (b) to sell any assets of the company at public auction or by private sale without any notice;
 - (c) to collect the debts and assets due or belonging to the company;
 - (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
 - (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
 - (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
 - (g) to retain solicitors, accountants and other advisers and appoint agents;
 - (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors permitted under section 101(a), as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
 - (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
 - (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.
- (2) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the Court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.

105. Procedure on winding-up and dissolution

- (1) The directors of a company required under section 99 or proposing under section 100 to wind up and dissolve the company shall approve a plan of dissolution containing
 - (a) a statement of the reason for the winding-up and dissolving;
 - (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
 - (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
 - (d) a statement of the estimated time required to wind up and dissolve the company;
 - (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interest of the creditors or members of the company;
 - (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
 - (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.
- (2) Where a winding-up and dissolution is being effected in a case where section 100 (2) is applicable,
 - (a) the plan of dissolution shall be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;
 - (b) where a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, shall be given to each member, whether or not entitled to vote on the plan of dissolution; and
 - (c) where it is proposed to obtain the written consent of members, a copy of the plan of dissolution shall be given to each member, whether or not entitled to consent to the plan of dissolution.

- (3) After approval of the plan of dissolution by the directors, and if required, by the members in accordance with subsection (2), articles of dissolution shall be executed by the company and shall contain
 - (a) the plan of dissolution; and
 - (b) the manner in which the plan of dissolution was authorised.
- (4) Articles of dissolution shall be submitted to the Registrar who shall retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company shall cause to be published in the Gazette a notice stating
 - (a) that the company is in dissolution;
 - (b) the date of commencement of the dissolution; and
 - (c) the names and addresses of the liquidators.
- (5) Except in respect of a limited life company registered under Part X, a winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such other subsequent date, not exceeding 30 days from the registration of the articles as is stated in the articles of dissolution.
- (6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall
 - (a) strike the company off the Register; and
 - (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.
- (7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved
 - (a) the certificate is prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
 - (b) the dissolution of the company is effective from the date of the issue of the certificate.
- (8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette a notice that the company has been dissolved and has been struck off the Register.

- (9) A company that unlawfully contravenes subsection (4) shall commit an offence and shall on conviction be liable to a fine of Rs 100 for every day or part thereof during which the contravention continues.
- (10) A director or liquidator who knowingly permits a contravention under subsection (9) shall commit an offence and shall on conviction be liable to a fine of Rs 100 for every day or part thereof during which the contravention continues.

106. Rescission of winding-up and dissolution

- (1) In the case of a winding-up and dissolution permitted under section 100, a company may, prior to submitting to the Registrar a statement specified in section 105 (6), rescind the articles of dissolution by
 - (a) a resolution of directors in the case of a winding-up and dissolution under section 100 (1); or
 - (b) a resolution of members in the case of a winding-up and dissolution under section 100 (2).
- (2) A copy of a resolution referred to in subsection (1) shall be submitted to the Registrar who shall retain and register it in the Register.
- (3) Within 30 days from the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company shall cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette.

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

- (1) Where
 - (a) the directors or, as the case may be, the members of a company that is required under section 94 or permitted under section 95 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
 - (b) the liquidator after his appointment has reason so to believe, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.
- (2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act 1984 relating to winding-up and dissolution and those provisions shall apply *mutatis mutandis* to the winding-up and dissolution of the company.

108. Winding-up and dissolution by the Court

- (1) Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the Court under any of the circumstances, in so far as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act 1984 may be wound up by the Court and, in that case, the provisions of the Companies Act relating to winding-up and dissolution apply *mutatis mutandis* to the winding-up and dissolution of the company.
- (2) Any person who, pursuant to subsection (1), files, or causes to be filed, a petition for the winding up of a company incorporated under this Act, shall forthwith serve on the Registrar a notice that the petition has been filed, and the Registrar shall retain and register the notice.

109. Receivers and managers

The provisions of the Companies Act 1984 regarding receivers and managers govern *mutatis mutandis* the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

110. Striking-off

- (1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an international company under section 5, the Registrar shall serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.
- (2) Where the Registrar does not receive a reply within 30 days of the service of the notice referred to in subsection (1), he shall serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days and the notice shall be published in the Gazette.
- (3) Where the Registrar
 - (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or
 - (b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection;

he shall strike the name of the company off the Register, and cause a notice of the striking off to be published in the Gazette, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off.

- (4) Where a company fails to pay any ordinary fee, licence fee or any penalty due under this Act and regulations made under it, for a period exceeding 3 months from the date the first payment arises, the Registrar shall serve on the company a notice stating the amount of the licence fee or other fee and penalty due and stating that the name of the company will be struck off the Register if the company fails to pay the amount within 6 months of the service of the notice.
- (5) Where a company fails to pay the fee stated in the notice referred to in subsection (4) within the specified period, the Registrar shall strike the name of the company off the Register and shall cause to be published a notice of the striking off in the Gazette.
- (6) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

111. Restoration to register

- (1) Where the name of a company has been struck off the Register under section 110 (3), the company, or a creditor, member or liquidator thereof, may apply to the Court to have the name of the company restored to the Register.
- (2) Where on an application under subsection (1) the Court is satisfied that
 - (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an international company under section 5; and
 - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees due under this Act and regulations made under it without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (3) Where the name of a company has been struck off the Register under section 110 (5), the company, or a creditor, member or liquidator thereof may, within 5 years from the date of the striking-off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of all fees or licence fees including any applicable penalty, if any, due under this Act and regulations made under it, the Registrar shall restore the name of the company to

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

- (4) Where a company has been struck off the Register under section 44(4), the company, or a creditor, member or liquidator thereof, may apply to the Registrar to have the name of the company restored to the Register.
- (5) Where the Registrar is satisfied that -
 - (a) a person qualified under section 42(2) has agreed to act as registered agent of the company; and
 - (b) it would be fair and reasonable for the name of the company to be restored to the Register;

he shall restore the name of the company to the Register -

 - (i) on submission to the Registrar by the applicant of a certified copy of the resolution amending the Memorandum to change the registered agent; and
 - (ii) on payment of any fees due by the company.
- (6) On restoration of the name to the Register under subsection (5), it shall be deemed never to have been struck off the Register.
- (7) For purposes of this Part, the appointment of an official receiver under section 113 operates as an order to restore the name of the company to the Register.

112. Effect of striking-off

- (1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally
 - (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
 - (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
 - (c) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may
 - (a) make application for restoration of the name of the company to the Register;

- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
 - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that the name of a company is struck off the Register does not prevent
- (a) the company from incurring liabilities;
 - (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or
 - (c) the appointment by the Court of an official liquidator for the company under section 113.

113. Appointment of official liquidator

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

114. Dissolution of company struck off

- (1) Subject to subsection (2), where the name of a company has been struck off the Register under section 110 and remains struck off continuously for a period of 5 years, the company shall be deemed to have been dissolved.
- (2) The Registrar may, if he determines that it is in the best interests of the Government of The Republic of Mauritius to do so, apply to the Court before the expiry of the period of 5 years to have the company put into liquidation and a person shall be appointed as the official liquidator.
- (3) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to
 - (a) identifying and taking possession of all assets of the company;
 - (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days from the date of the advertisement; and

- (c) applying those assets that he recovers in the following order of priority:
 - (i) in satisfaction of all outstanding fees due to the Registrar, and
 - (ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.
- (4) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the Court may as it considers reasonable confer on him.
- (5) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.
- (6) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situated, that are not disposed of, vest in the Curator of Vacant Estate in the Republic of Mauritius and the company is dissolved.
- (7) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the Court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.
- (8) No liability attaches to an official liquidator
 - (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
 - (b) for any failure to locate any assets of the company.

PART X

Limited Life Company

115. Registration as a limited life company

- (1) An application may be made to the Registrar for the registration of an international company as a limited life company at the time of incorporation, or at the time of applying for continuation under Part VIII or at any other time after incorporation or registration by way of continuation.

- (2) An application in respect of an international company to which a certificate of incorporation under section 14 or a certificate of registration by way of continuation under section 94 has been issued, shall be accompanied by a certified copy of the relevant extract of its Memorandum and Articles limiting the life or duration of the company to a period not exceeding 50 years from the date of incorporation; or, where necessary, of a resolution of the company altering its Memorandum for that purpose.
- (3) The Registrar shall register the company to which the application refers as a limited life company where immediately on incorporation or registration-
 - (a) the company satisfies the requirements of section 5;
 - (b) the company has at least two subscribers or members; and
 - (c) the Memorandum of the company limits the life of the company to a period not exceeding 50 years from the date of its incorporation.
- (4) On registering a company as a limited life company, the Registrar shall certify in the certificate of incorporation issued under section 14 or in the certificate of registration by way of continuation issued under section 94 that the company is registered as a limited life company, stating the date of the registration.

116. Maximum duration of a limited life company

A limited life company may by resolution alter its Memorandum extending the duration of the company to such period or periods not exceeding in aggregate 150 years from the date of the incorporation of the company.

117. Contents of the Articles

- (1) The Articles of a limited life company may -
 - (a) prohibit the transfer of any share or other interest of a member of the company absolutely or may provide that the transfer of any share or other interest of a member requires either the unanimous resolution of all the members, or a resolution passed by such proportion of the members as the Articles may specify;
 - (b) distinguish for the purpose of paragraph (a) between various interests in the company, such as an interest in the profits of the company, an interest in the capital of the company, or an interest in management of the company;

- (c) provide that a person shall cease to be a member of the company upon the happening of any one or more of the events specified in the Articles, and may further provide that the rights of such former members shall be limited to an entitlement to receive such value for their shares in the company as may be determined by the Articles;
- (d) provide that the affairs of the company may be managed by its members in their capacity as such, or by some person designated as manager with such rights, powers and duties as may be specified in the Articles;
- (e) designate a person to be the liquidator of the company in the event of the company being in dissolution by operation of section 118;
- (f) provide that where the company dissolves by virtue of section 118(1)(c), -
 - (i) the liquidator designated in the Articles shall discharge any liabilities existing immediately before dissolution and distribute any surplus assets remaining after dissolution among the former members according to their respective rights;
 - (ii) any one or more of the members of the dissolved company may retain the assets of the company and continue its business as a new enterprise not incompatible with the provisions of this Act; and any member who do not wish to continue in the new enterprise shall be entitled to receive such value for their share in the dissolved company as may be determined by the Articles;
- (g) provide that a member shall be liable generally to the creditors of the company, or that a member shall be liable upon dissolution of the company, after application of all the assets of the company, to the creditors of the company and to other members for their unreturned capital.

118. Winding up of a limited life company

- (1) Notwithstanding section 100(5), a limited life company dissolves -
 - (a) when the period fixed for the duration of the company expires; or
 - (b) where the members of the company pass a special resolution requiring the company to be wound up and dissolved; or
- (c) subject to any contrary provisions in the Articles of the company, upon the happening of any one or more of the following events -
 - (i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation or dissolution of a member;

- (ii) the transfer of any share or other interest in the company in contravention of the Articles of the company;
 - (iii) the redemption, repurchase or cancellation of all the shares of a member of the company; or
 - (iv) the occurrence of any event (whether or not relating to the company or a member) on which it is provided in the Articles that the company is to be dissolved.
- (2) Where a limited life company dissolves by virtue of subsection (1) and no liquidator is designated to act in the Articles of the company, the members of the dissolved company shall by resolution appoint a liquidator for the purposes of the winding up, and if they fail to pass such a resolution, the Court may under section 102(2) appoint a liquidator.
- (3) Sections 99 to 101 and section 105 (1) shall not apply to the winding up of a limited life company.
- (4) Section 105(2) shall apply to the winding up of a limited life company independently of any case where section 95(2) may be applicable.
- (5) Any reference to the passing of a resolution for the winding up of a company in section 105(2) and section 107(1) shall be construed as including a reference to the happening of an event causing a limited life company to dissolve.
- (6) Any reference to a liquidator or the appointment of a liquidator in sections 102 to 106 inclusive shall be construed as including a reference to a liquidator appointed in the Articles of the company.

119. Cancellation of registration

- (1) A company ceases to be a limited life company where -
- (a) the Registrar removes its name from the Register under Section 105(6)(b); or
 - (b) the company passes a special resolution to alter its memorandum or association to provide for a period of duration for the company that exceeds or is capable of exceeding 150 years from the date of its incorporation.
- (2) On a company ceasing to be a limited life company -
- (a) the Registrar shall, where the company has ceased to be a limited life company by virtue of subsection (1)(b), issue to the company on payment of a prescribed fee a certificate of incorporation altered to meet the circumstances of the case; and

- (b) the certificate issued by virtue of section 110(4) ceases to have effect.
- (3) A resolution passed for the purpose of subsection (1) (b) has no effect until a certificate of incorporation is issued by the Registrar under subsection (2)(a).

120. Definition of "transfer"

In this Part, unless the context otherwise requires, "transfer" in relation to any shares, means the transfer, sale, assignment, mortgage, creation or permission to subsist of any pledge, lien, charge or encumbrance over, grant of any option, interest or other rights in, or other disposition of any such shares, any part thereof or any interest therein, whether by agreement, operation of law or otherwise.

PART XI**Fees and Exemptions****121. Fees and penalties**

- (1) The Minister may by regulations provide for -
 - (a) the payment of ordinary fees, licence fees and penalties to the Registrar;
 - (b) the time when and the delay within which such fees, licence fees and penalties shall be paid;
 - (c) the rate of such penalties.
- (2) The ordinary fees, licence fees and penalties shall in the regulations made under subsection (1) be expressed in the Dollar Currency of the United States of America, and may be payable in the equivalent sum in Mauritian Rupees or in any other currency acceptable to the Registrar converted at the prevailing selling rate.

122. Recovery of fees and penalties

- (1) Any ordinary fee, licence fee or penalty payable under this Act which remains unpaid for more than 30 days after the date on which demand for payment is made by the Registrar, may be recovered as a civil debt to the Government of Mauritius under the Recovery of State Debts Act.
- (2) A company incorporated under this Act continues to be liable for all fees, licence fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees and penalties have priority to all other claims against the assets of the company.
- (3) The Registrar may refrain from doing anything or taking any action required of him under this Act for which a fee is prescribed until all fees have been paid.

123. General exemptions

- (1) An international company shall be exempt from payment of any duty, levy, charge, fee or tax, and from the requirement of any filing imposed by the following enactments:
 - (a) the Land (Duties and Taxes) Act 1984;

- (b) the Licences Act 1992;
- (c) the Local Government Act 1989;
- (d) the Registration Duty Act;
- (e) the Sales Tax Act 1982,
- (f) the Stamp Duty Act 1990; and
- (g) the Transcription and Mortgage Act.

(2) All documents relating to -

- (a) transfers of any property to or by a company incorporated under this Act;
- (b) transactions in respect of shares, debt obligations or other securities of a company incorporated under this Act;
- (c) the assets or activities of a company incorporated under this Act,

shall be exempt from any duty, charge or fee, or from the requirement of any filing arising from any enactment listed in subsection (1) or any regulations made under these enactments.

124. Exemption from the Income Tax Act

There are exempt from all the provisions of the Income Tax Act -

- (a) all income of a company incorporated under this Act;
- (b) all dividends or other distributions paid by the company to any person;
- (c) all interest, rents, royalties, compensations and other amounts paid by the company to any person being a non-resident of the Republic of Mauritius; and
- (d) capital gains realised with respect to any shares, debt obligations or other securities of a company incorporated under this Act by persons who not residents of the Republic of Mauritius.

125. Tax Residency

A company incorporated under this Act shall not be resident for the purposes of any arrangement made under section 83 of the Income Tax Act with the Government of a foreign country with a view to affording relief from double taxation.

126. Exemption from the Exchange Control Act

The Exchange Control Act shall not apply to a company incorporated under this Act or to any transactions relating to the securities of or in such company between the holders of the securities.

PART XII**MISCELLANEOUS****127. The Registrar of International Companies**

- (1) There shall be a Registrar of International Companies and such officer as may be required to assist him, designated by the Minister.
- (2) The Registrar may with the approval of the Minister delegate all or any of his functions to another officer.
- (3) The Registrar shall keep-
 - (a) a register to be known as the Register of International Companies in which the Memorandum and Articles of Association of any company incorporated under this Act shall be entered;
 - (b) such registers as he considers necessary in such form as he thinks fit, subject to the requirement that where any filing is done or information is kept by means of magnetic, electronic or other data storage form, legible evidence of the contents may be produced.
- (4) Where the Registrar is of opinion that a document submitted to him
 - (a) contains any matter contrary to law;
 - (b) is by reason of any omission or misdescription not complete;
 - (c) does not comply with the requirements of this Act or any regulations made under this Act; or
 - (d) contains any error, alteration or erasure,he may refuse to accept the document.
- (5) (a) Where a Memorandum or Articles or any document relating to an international company required to be filed, has been lost or destroyed, the company may apply to the Registrar for leave to lodge a copy of the document.

- (b) On receipt of an application under paragraph (a), the Registrar may direct that a notice to that effect shall be given to such persons and in such manner as he thinks fit.
 - (c) The Registrar may on being satisfied -
 - (i) that the original document has been lost or destroyed;
 - (ii) of the date of the lodging of the document; and
 - (iii) that the copy of the document produced to him is a correct copy, certify on that copy that he is so satisfied and direct that the copy be lodged in the same manner as the original.
 - (d) The copy shall on being lodged from the date mentioned in the certificate as the date of the lodging of the original, have the same force and effect as the original.
- (6) The Minister may -
- (a) direct the Registrar to set up a Branch Register of International Companies in any place outside the Republic of Mauritius;
 - (b) make regulations for the management, administration and operation of the Branch Register set up under paragraph (a).

128. Optional registration of registers

- (1) A company incorporated under this Act may elect to register with the Registrar any of the following registers:
 - (a) its share register or its register of members;
 - (b) its register of directors; or
 - (c) its register of mortgages and charges.
- (2) For the purpose of the registration of a register under subsection (1), a company shall submit to the Registrar a copy duly authenticated under section 83 of-
 - (a) the register;
 - (b) any change in the register, within 30 days of the occurrence of the change.
- (3) A company may elect to cease the registration of changes in the register by giving notice in writing to the Registrar.
- (4) Where a company elects to submit for registration any register in accordance with subsection (1), the company shall be bound by the contents of each copy register submitted to the Registrar until each time as notice to cease registration is served on the Registrar under subsection (3).

129. Optional registration of mortgages and charges

A company incorporated under this Act may submit to the Registrar for registration any document or a copy of a document duly authenticated under section 83-

- (a) creating a mortgage, charge or other encumbrance over some or all its assets;
- (b) amending any document referred to in paragraph (a); and
- (c) releasing or discharging a mortgage, charge or other encumbrance over any or all its assets;

and the Registrar shall retain and register the document or the copy, as the case may be.

130. Confidentiality

- (1) The Registrar and any officer or person assisting him or exercising any of his powers or to whom the powers of the Registrar are delegated, shall deal with all documents and other information in their possession or under their control concerning protected persons and all matters concerning such persons in respect of their business activities, as secret and confidential, except to the extent the company consents to the disclosure.
- (2) In this section -
"protected person" -
 - (i) means an international company, the beneficial owners, shareholders, members of an international company, or any trustee holding shares in an international company, carrying on lawful business activities under this Act;
 - (ii) includes any person having an interest in such lawful activities whether as client, customer or an employee or officer of the international company.
- (3) Except where ordered by a Judge in Chambers for a reason specified in subsection (4), any person, body corporate, including its members, directors, officers or employees, or its registered agent, shall not be required to produce or divulge to any court, tribunal, committee of inquiry or other authority in Mauritius or elsewhere any document, information or other matter coming to his notice, or being in his possession or control for any reason.
- (4) Notwithstanding any other enactment, the Judge in Chambers shall not make an order for disclosure or production of any confidential information referred to in subsection (1) except on the application of the Director of Public Prosecutions, and on proof beyond reasonable doubt that the confidential information is *bona fide* required for the purpose of any enquiry or trial into or relative to -

- (a) the trafficking of narcotics and dangerous drugs and to the proceeds of such trafficking, contrary to the Dangerous Drugs Act 1986;
 - (b) any act done otherwise than in the Republic of Mauritius which would, if done in the Republic of Mauritius, have constituted an offence of trafficking under the Dangerous Drugs Act 1986.
- (5) This section shall be without prejudice to -
- (a) the obligations of Mauritius under any international treaty, convention or agreement, and to the obligations of any public sector agency under any international arrangement or concordat;
 - (b) such disclosure as is necessary for the purpose of administering this Act, and of discharging a function under this Act.

131. Court proceedings

In any matter of a civil or commercial nature to which an international company incorporated under this Act is a party, the Court or the Judge in Chambers, as the case may be, may -

- (a) give such directions as are necessary to protect the identity of the company and any person declared as a "protected person" under section 130 (2);
- (b) without prejudice to the generality of paragraph (a)
 - (i) order that proceedings be held in camera;
 - (ii) restrict or prohibit publication of any report of the proceedings or of any specified part of the proceedings or of any document filed in the course of the proceedings.

132. Legal professional privilege

In any criminal investigation against an international company, no person shall be required to disclose information which he is entitled to refuse to disclose on grounds of legal professional privilege.

133. Investigation by the Registrar

- (1) Where the Registrar has reasonable cause to suspect that an international company
 - (a) is not complying with any of the requirements of section 5 of this Act or regulations made under this Act; or
 - (b) is being used in any way for the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering;

he may by notice indicating his suspicions, served at the registered office of the international company with a copy served on its registered agent, require the company to produce any of the books, records and any other documents required to be kept under section 75 or any other information relevant to his suspicions, including its bank accounts, to its registered agent within 21 days, failing which the name of the company shall be struck off the register of international companies.

- (2) An international company on which notice is served under subsection (1) may within 14 days of the service apply to a Judge in Chambers for an order rescinding the requirement of the Registrar contained in the notice.
- (3) In any proceedings on the application under subsection (2), the burden of proof shall lie on the applicant to show that the requirement of the Registrar is unreasonable, taking into account the conduct of its affairs.
- (4) Where an international company fails to comply with a notice under subsection (1), the Registrar shall strike off the name of the company from the Register of International Companies.
- (5) On receiving the documents in compliance with the notice under subsection (1), the registered agent shall -
 - (a) inform the Registrar forthwith;
 - (b) inspect the papers and investigate promptly from the company, its directors, officers or agents about the conduct of the affairs of the company and report diligently and faithfully to the Registrar, stating its opinion on the suspicions indicated in the notice served on the company.
- (6) The registered agent may make or be required to make such interim reports to the Registrar as appear necessary.
- (7) Where on the report made by the registered agent of the company, the Registrar is satisfied that -
 - (a) there is a breach of the requirements of section 5; or
 - (b) in any way the company's conduct of its affairs is such as it may damage the good repute of the Republic of Mauritius,

he shall serve a notice on the company at its registered office calling on it to show cause within fourteen days of service why the name of the company should not be struck off from the register, and unless otherwise persuaded by the reply to the notice, shall proceed to do so.

- (8) Where from the report of the registered agent, there is reasonable suspicion that the international company has been used in any way for the trafficking of narcotics or dangerous drugs, or arms dealing or money laundering, the Registrar shall report the matter to the Director of Public Prosecutions.
- (9) Where the company has been struck off from the Register, the Director of Public Prosecutions may direct the Registrar to restore its name to the Register and on being so restored, the company shall be deemed never to have been struck off.
- (10) The Registrar shall -
 - (a) not take notice of or be bound by any decision of an international company on which notice has been served under subsection (1) to remove, denounce or in any way cancel the appointment of his registered agent pending a final decision on the inquiry;
 - (b) report to the Authority any management company acting as registered agent of an international company who in the opinion of the registrar fails to apply due diligence in the conduct of an inquiry under this section, or in the exercise of any of its functions as registered agent.

134. Certificate of good standing

- (1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that
 - (a) the name of the company is on the Register; and
 - (b) the company has paid all fees, licence fees and penalties due and payable.
- (2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether
 - (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
 - (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;

- (c) the company is in the process of being wound up and dissolved; or
- (d) any proceedings to strike the name of the company off the Register have been instituted.

135. Certificate by Registrar

- (1) Except as provided in section 85 (2), and notwithstanding section 116, the Registrar may on application supported by an affidavit sworn in the Republic of Mauritius that the information is bona fide required for the service of process on an international company, or with the approval of the company, provide the address of its registered office or a copy of its certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or a certificate of good standing of the company.
- (2) A document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings and shall be prima facie evidence of its contents.

136. Jurisdiction

For purposes of determining matters relating to title and jurisdiction, the situs of the ownership of shares, debt obligations or other securities of a company incorporated under this Act is in The Republic of Mauritius.

137. Judge in Chambers

A judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction.

138. Offences

- (1) Any person who contravenes this Act or any regulations made under this Act shall commit an offence, and shall, where no specific penalty is provided, on conviction be liable to a fine not exceeding Rs10,000.
- (2) Notwithstanding section 112 of the Courts Act, the District Court shall have jurisdiction to try all offences under this Act or any regulations made this Act and may impose any penalty imposed in them.

139. Regulations

- (1) The Minister may for the purposes of this Act make such regulations as he thinks fit;
- (2) Any regulations made under this Act may -

- (a) provide for the taking of fees and levying of charges;
- (b) provide that any person who contravenes them shall commit an offence and shall on conviction be liable to a fine not exceeding Rs10,000.
- (c) provide for the implementation of a system of storage, exchange and transmission of information in magnetic, electric or other form with respect to the administration of the registry of international companies and may provide that "filing" shall include filing by the use of the prescribed information system.

140. Consequential amendments

The Mauritius Offshore Business Activities Act 1992 is amended in

- (a) in section 2,
 - (i) by inserting in its appropriate place the following definition:
"international company" means a company incorporated or registered by way of continuation under the International Companies Act 1994;"
 - (ii) in the definition of "offshore business activity" by inserting after the semi-colon the following words:
"and includes an activity conducted by an international company;"
 - (iii) in subsection (3), by inserting immediately after the words "offshore company," the words "international company";
- (b) in section 20(2), by inserting after words "apply to" the words "an international company or"
- (c) in section 23(1), by inserting after the words "offshore companies", the words "and to international companies";
- (d) in section 24-
 - (i) by deleting subsection (2);
 - (ii) by renumbering the existing subsection (3) as subsection (2);
 - (iii) by deleting in the new subsection(2),
 - (AA) the lettering (a);
 - (AB) the words "having an ordinary status";
 - (AC) paragraph(b);
- (e) by deleting section 25;

- (f) in section 26 (1)(b), by inserting immediately after the words "offshore trust" the words "or an international company".

141. Transitional provisions

- (1) In this section, "offshore company" means an offshore company having an exempt status under the Mauritius Offshore Business Activities Act 1992 immediately before the commencement of this Act.
- (2) An offshore company shall continue to be governed by the law applicable to it immediately before the commencement of this Act, except where the company-
- (a) elects under subsection (3) to continue as an international company incorporated under this Act;
 - (b) becomes an offshore company having an ordinary status under the Mauritius Offshore Business Activities Act 1992; or
 - (c) is dissolved.
- (3) An offshore company which elects to continue as an international company incorporated under this Act shall-
- (a) comply with the provisions of Part VIII;
 - (b) be exempt from payment of any ordinary fee prescribed for the registration of the company under that Part and from payment of any prescribed licence fee falling due before 1 January 1995.
- (4) An offshore company-
- (a) may apply in accordance with the Mauritius Offshore Business Activities Act 1992 for an offshore certificate (ordinary status);
 - (b) shall be exempt from the payment of any processing fee and of the first annual fee prescribed as in respect of an offshore company (ordinary status).
- (5) An offshore company which has not been dissolved before 31 December 1996 shall as from that date be deemed to have commenced procedures for winding up and dissolution as if a resolution of members to that effect has been duly passed and the company shall be wound up and dissolved in accordance with Part XI of the Companies Act 1984.

- (6) Where the operation of this section may result in any form of deprivation of property, the company or a shareholder of the company may apply to the Supreme Court for a declaration that the offshore company shall have the same legal status and regime applicable to it immediately before the commencement of this Act.
- (7) The Supreme Court on an application under subsection (6) shall make such order as it thinks just and appropriate.

142. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the twenty-second day of March one thousand nine hundred and ninety-four.

ANDRE POMPON
Clerk of the National Assembly

* * *

THE INTERNATIONAL COMPANIES ACT 1994**Regulations made by the Minister under section 121 of the
International Companies Act 1994**

1. These regulations may be cited as the International Companies (Fees) Regulations 1994.
2. (1) In these regulations -
"Act" means the International Companies Act 1994;
"Dollar" or "\$" means the Dollar Currency of the United States of America.
- (2) Reference in the Schedule to a section of the law shall be construed as a reference to a section of the Act.
3. There shall be paid to the Registrar the annual licence fee specified in Part I of the Schedule -
 - (a) in the case of a company incorporated before 1 July in any calendar year, on or before 31 May of the year following its incorporation and of any subsequent year;
 - (b) in the case of a company incorporated after 30 June in any calendar year, on or before 30 November of the year following its incorporation and of any subsequent year.
4. There shall be paid to the Registrar on or before the occurrence of the matters specified in the first column of Part II of the Schedule, the corresponding ordinary fee specified in the second column of that Part of the Schedule.
5. Where the annual licence fee or the ordinary fee is not paid on or before the date specified under regulations 3 or 4, there shall be paid to the Registrar, in addition to the fee, a penalty -
 - (a) subject to paragraph (b), amounting to 10 percent of the fee unpaid;
 - (b) in the event the fee is paid more than three months after the date specified in the regulations 3 or 4, amounting to twice the fee unpaid.
6. These regulations shall come into operation on 1 August 1994.

Made by the Minister on 29 July 1994.

SCHEDULE
(Regulations 3 and 4)

PART I**ANNUAL LICENCE FEES**

- | | | |
|----|---|--------|
| 1. | A company of which on the date of payment of the annual licence fee - | |
| | (a) the authorised capital does not exceed \$ 100 000; and | |
| | (b) all the shares have a par value | \$ 100 |
| 2. | Any company other than one described in item 1 | \$ 300 |

PART II**ORDINARY FEES*****Reservation of name***

- | | | |
|----|---|-------|
| 1. | (a) For the reservation of a name under section 11 (8) for | |
| | (i) an initial period not exceeding 30 days | Nil |
| | (ii) a period exceeding 30 days but not exceeding 90 days | \$ 30 |
| | (b) For the renewal of a reservation | |
| | (i) after the initial period of 30 days referred to in subparagraph (a) (i) but not exceeding 90 days after first reservation | \$ 50 |
| | (ii) for each subsequent month after the expiry of the period of 90 days referred to in subparagraph (a) (ii) | \$ 50 |

Incorporation

- | | | |
|----|--|--------|
| 2. | On the registration under section 14 of the memorandum (with or without the articles) of a company | |
| | (a) the authorised capital of which does not exceed \$ 100 000 and all the shares of which have a par value; | \$ 100 |
| | (b) (i) the authorised capital of which exceeds \$ 100 000; or | |
| | (ii) having no authorised share capital; or | |

- (iii) any or all the shares of which have no par value \$ 300

Continuation

3. (1) On the registration of the articles of continuation and accompanying documents of a company
- (a) under section 94(3)(b) \$ 400
- (b) after provisional submission of documents under section 95(3) \$ 200
- (2) On the submission to the Registrar of any documents under section 95 (1) for the purpose of provisional registration \$ 400
- 0(3) On delivery of a notice under section 95 (5) rescinding a written authorisation after provisional submission of documents for registration by way of continuation \$ 200
- (4) On resubmission to the Registrar of documents referred to in section 95 (7) \$ 100

Submission of documents

4. On the registration of the articles of a company by the Registrar under section 13 after its incorporation \$ 50
5. On the registration under section 16 (2) by the Registrar of a copy of a resolution of members or a resolution of directors amending the Memorandum and Articles of a company
- (a) where submitted to the Registrar within 30 days after the passing of the resolution \$ 20
- (b) where submitted more than 30 days after the passing of the resolution \$ 50
6. On the registration of articles of merger or consolidation under section 86(5)(e), section 87(6) or articles of arrangement under section 92(8) \$ 500
7. On submission of a notice to the Registrar of an increase or

reduction in authorised capital under section 26(4)

- | | | |
|-----|--|--------|
| (a) | in any case other than under paragraph (b), | \$ 20 |
| (b) | where the notice of an increase of capital from \$ 100 000 or less to more than \$ 100 000 | \$ 300 |

Dissolution & Deregistration

- | | | |
|-----|---|--------|
| 8. | On the registration of the articles of dissolution under section 105 (4) | \$ 100 |
| 9. | On the registration of a copy of the resolution rescinding the articles of dissolution under section 106 (2) | \$ 100 |
| 10. | On the registration by the Registrar of a legal opinion (affidavit) attesting to a company incorporated under this act continuing its incorporation under other jurisdictions | \$ 100 |

Restoration

- | | | |
|-----|--|--------|
| 11. | On restoration by the Registrar to the Register of a company whose name was struck off the Register | |
| (a) | where the application for restoration is made within 6 months of the striking of the name off the Register | \$ 300 |
| (b) | where the application for restoration is made more than 6 months after the striking of the name off the Register | \$ 600 |

Optional Registers

- | | | |
|-----|---|-------|
| 12. | (a) On initial registration by the Registrar of a copy of a share register, a register of members, a register of directors or a register of mortgages and charges under section 128 | \$ 50 |
| | (b) On registration by the Registrar of a copy of a share register, a register of members, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered by the Registrar | \$ 50 |
| 13. | On the registration by the Registrar of a notice that a company has elected to cease to register a copy of a share | |

register, a register of members, a register of directors, a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered with the Registrar \$ 50

14. On the registration by the Registrar of any document or a copy of a document duly authenticated referred to in section 129 \$ 50

Miscellaneous

15. On the issue by the Registrar of a duplicate or a certified copy of
- (a) the certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing \$ 20
 - (b) an extract of a document, or part of a document other than one referred to in paragraph (a) \$ 20
16. For an inspection of the documents or an entry in a document kept by the Registrar or in the Register \$ 20

VI International Companies (Fees) (Amendment) Regulations 1997

THE INTERNATIONAL COMPANIES ACT 1994

**Regulations made by the Minister under section 121 of the
International Companies Act 1994**

1. These regulations may be cited as the International Companies (Fees) (Amendments) Regulations 1997.
2. In these regulations -

“principal regulations” means the International Companies (Fees) Regulations 1994.
3. The Second Schedule to the principal regulations is amended in paragraph 3, in subparagraph (1) (a), by deleting the figure “400” and replacing it by the figure “300”.

Made by the Minister on 5 August 1997.