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GRENADA

## ACT NO. 35 OF 1994

I assent,

L.S.

REGINALD OSWALD PALMER
*Governor-General.*

*8th November, 1994.*

An Act to revise and amend the law relating to companies and to provide for related and consequential matters.

*[ 18th November, 1994 ].*

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows:

Short title and commencement.

1.—(1) This Act may be cited as the

COMPANIES ACT, 1994.

(2) This Act shall come into operation on such date as may be fixed by the Governor-General by Proclamation published in the *Gazette*.

Interpretation.

**2.** The provisions of section 543 shall apply for the purpose of construing the words and expressions set out

therein and the other provisions of Division E of Part shall apply for the purpose of this Act.

Prohibition.

3. No association, partnership, society, body or otl group consisting of more than twenty persons may formed for the purpose of carrying on any trade or busin for gain unless it is incorporated under this Act or form under some other enactment.

PART I

FORMATION AND OPERATION OF COMPANIES

**Division A: Incorporation of Companies**

Incorporation.

4.—(1) Subject to subsection (2), one or more perso may incorporate a company by signing and sending articl of incorporation to the Registrar and the name of eve incorporator shall be entered in the company's register members as soon as may be after the company registration.

(2) No individual who

(*a*) is less than 18 years of age;

(*b*) is of unsound mind and has been found by a tribunal in Grenada elsewhere; or

(*c*) has the status of a bankrupt,

shall form or join in the formation of a company under th Act.

(3) If articles of incorporation submitted to tl Registrar are accompanied with a statutory declaration b an attorney-at-law that to the best of his knowledge ai

belief no signatory to the articles is an individual described in subsection (2), the declaration is, for the purposes of this Act, conclusive of the facts therein declared.

Formalities.

**5.** (1) Articles of incorporation shall follow the prescribed form and set out, in respect of the proposed company,

(*a*) its proposed name;

(*b*) the classes and any maximum number of shares that the company is authorised to issue; and

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and

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

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

(*d*) the number of directors, or subject to paragraph (a) of section 71 the minimum and maximum number of directors;

(*e*) any restrictions on the business that the company may carry on.

(2) The articles may set out any provisions permitted by this Act or by-law to be set out in the by-laws of the company.

(3) Where the right to transfer any shares is restricted, a notification to that effect shall be given on each share certificate issued in respect of those shares.

uired s.

**6.**—(1) Subject to subsection (2), if the articles or any unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 73.

umen- n.

**7.** An incorporator shall send to the Registrar with the articles of incorporation the documents required by subsection (1) of section 69, subsection (1) of section 176 and section 503.

ificate of rporation.

**8.** Upon receipt of articles of incorporation, the Registrar shall issue a certificate of incorporation in accordance with section 503; and the certificate is conclusive proof of the incorporation of the company named in the certificate.

ctive

**9.** A company comes into existence on the date shown in its certificate of incorporation.

orate s.

**10.**—(1) The word "limited", "corporation" or "incorporated" or the abbreviation "Ltd." or "Corp." or "Inc." shall be part of the name of every company; but a company may use and may be legally designated by either the full or the abbreviated form.

(2) The Registrar may exempt a body corporate continued as a company under this Act from the requirements of subsection (1).

Reserved name.

**11.** A company shall not be incorporated with or have a name

(*a*) that is prohibited or refused under sections 515 and 516; or

(*b*) that is reserved for another company or intended company under section 514.

Name change.

**12.** Where, through inadvertence or otherwise, a company

(*a*) comes into existence with a name that contravenes section 11, or

(*b*) is, upon an application to change its name, granted a name that contravenes section 11,

the Registrar may direct the company to change its name in accordance with section 213.

Continued name.

**13.** Notwithstanding sections 11 and 12, a company that is continued under this Act is entitled to be continued with the name it lawfully had before that continuance.

Name revocation

**14.** Where a company has been directed under section 12 to change its name and has not, within 60 days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Registrar may revoke the name of company and assign to it a name; and, until changed in accordance with section 213, the name of the company is thereafter the name so assigned.

signed ne.

**15.**—(1) When a company has had its name revoked and a name assigned to it under section 14, the Registrar shall issue a certificate of amendment showing the new name of the company and shall forthwith give notice of the change in the Gazette.

(2) Upon the issue of a certificate of amendment under subsection (1), the articles of the company to which the certificate refers are amended accordingly on the date shown in the certificate.

orporation eements.

**16.** (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

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

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

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

(*b*) a person, who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the company is adopted by the company, a party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf; and the court may, upon the application, make any order it thinks fit.

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

**Division B: Corporate Capacity and Powers**

Capacity and powers.

17.—(1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of an individual.

(2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Grenada to the extent that the laws of Grenada and of that jurisdiction permit.

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

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

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

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

'owers educed.

**18.** (1) A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles.

(2) A company shall not commence business before it has made an alottment of shares.

'alidity f acts.

**19.** For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles.

lotice not resumed.

**20.** No person is affected by, or presumed to have notice or knowledge of, the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at any office of the company.

lo dis claimer llowed.

**21.** A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company

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

(*b*) that the persons named in the most recent notice to the Registrar under section 69 or 77 are not the directors of the company;

(c) that the place named in the most recent notice sent to the Registrar under section 176 is not the registered office of the company;

(d) that a person held out by a company as a director, an officer or an agent of the company has not been duly appointed or had no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;

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

(f) that the financial assistance referred to in section 53 or the sale, lease, or exchange of property referred to in section 136 was not authorised;

except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

Contracts of a company.

**22.**—(1) A contract made according to this section on behalf of a company

(a) is in form effective in law and binds the company and the other party to the contract; and

(b) may be varied or discharged in the like manner that it is authorised by this section to be made.

(2) A contract that, if made between individual would, by law, be required to be in writing under seal ma be made on behalf of a company in writing under seal.

(3) A contract that, if made between individual would, by law, be required to be in writing or to b evidenced in writing by the parties to be charged thereb may be made or evidenced in writing signed in the name o on behalf of the company.

(4) A contract that, if made between individual would, by law, be valid although made by parol only an not reduced to writing may be made by parol on behalf o the company.

ills & otes.

**23.** A bill of exchange or promissory note is presume to have been made, accepted or endorsed, on behalf of th company, if made, accepted or endorsed in the name of th company or if expressed to be made, accepted or endorse on behalf or on account of the company.

ower of ttorney.

**24.**—(1) A company may, by writing under sea empower any person, either generally or in respect of an specified matter, as its attorney to execute deeds on it behalf in any place within or outside Grenada.

(2) A deed signed by a person empowered a provided in subsection (1) binds the company and has th same effect as if it were under the company's seal.

ompany als.

**25.**—(1) A company may have a common seal with it name engraved thereon in legible characters; but, excep when required by any enactment to use its common seal the company may, for the purpose of sealing an document, use its common seal or any other form of seal

(2) If authorised by its by-laws, a company ma have for use in any country other than Grenada or for us

in any district or place not situated in Grenada an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

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

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

(5) Any person dealing with an agent appointed pursuant to subsection (4) in reliance on the instrument conferring the authority may assume that the authority of the agent continues during the period, if any, mentioned in the instrument, or, if no period is so mentioned, until that person has actual notice of the revocation or determination of the authority.

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

Nature of shares.

**26.**—(1) Shares in a company are personal estate and are not of the nature of real estate; and a share is transferable in the manner provided by this Act.

(2) Shares in a company are to be without nominal or par value.

(3) When a former-Act company is continued under this Act, a share with nominal or par value issued by

the company before it was so continued is, for the purpos of subsection (2), deemed to be a share without nominal par value.

(4) Subject to subsection (5), each share in company shall be distinguished by an appropria designation.

(5) If at any time all the issued shares in company, or all the issued shares in a company of particular class, rank equally for all purposes, none those shares need thereafter have a distinguishi designation so long as it ranks equally for all purposes wi all shares for the time being issued, or, as the case may b all the shares for the time being issued of the particul class.

f only ne class.

**27.** When a company has only one class of shares, t rights of the holders are equal in all respects, and inclu

(*a*) the right to vote at any meeting shareholders;

(*b*) the right to receive any dividend declared the company;

(*c*) the right to receive the remaining prope of the company on dissolution.

hare lasses.

**28.** The articles of a company may provide for mc than one class of shares; and, if they so provide,

(*a*) the rights, privileges, restrictions a conditions attaching to the shares of ea class shall be set out in the articles; and

(*b*) the rights set out in section 27 shall be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

Share issue.

**29.** (1) Subject to the articles, the by-laws, any unanimous shareholder agreement, and section 34 shares may be issued at such times, and to such persons, and for such consideration, as the directors may determine.

(2) No company may issue bearer shares or bearer share certificates.

Consideration.

**30.** (1) A share shall not be issued until it is fully paid

(*a*) in money, or

(*b*) in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and reorganisation, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section, "property" does not include a promissory note or a promise to pay.

Stated capital accounts.

**31.**—(1) A company shall maintain a separate stated capital account for each class and series of shares that it issues.

(2) A company shall add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.

(3) A company shall not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company shall not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.

(5) When a company proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account shall be approved by special resolution if

(*a*) the amount to be added was not received by the company as consideration for the issue of shares, and

(*b*) the company has issued any outstanding shares of more than one class or series.

(6) Notwithstanding section 30 and subsection (2),

(*a*) when, in exchange for property, a company issues shares

(i) to a body corporate that was an affiliate of the company immediately before the exchange, or

(ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

(*b*) when a company issues shares in exchange for shares of a body corporate that was an affiliate of the company immediately before the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or

(*c*) when a company issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the company, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When a former-Act company is continued under this Act,

(*a*) then, notwithstanding subsection (2), it is not required to add to a stated capital account any consideration received by it before it was so continued, unless the share in respect of which the consideration is received is issued after the company is continued under this Act;

(*b*) an amount unpaid in respect of a share issued by the former-Act company before it was so continued shall be added to the stated capital account that is maintained for the shares of that class or series: and

(*c*) its stated capital account for the purposes of

(i) subsection (2) of section 39,

(ii) section 44,

(iii) paragraph (b) of subsection (2) of section 53, and

(iv) paragraph (a) of subsection (2) of section 224,

includes the amount that would have been included in stated capital if the company had been incorporated under this Act.

Open-ended mutual company.

**32.** Section 31 and any other provision of this Act relating to stated capital do not apply to a company

(*a*) that is a public company,

(*b*) that carries on only the business of investing the consideration it receives for the shares it issues, and

(c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders.

Series shares.

33. (1) The articles of a company may authorise the issue of any class of shares in one or more series, and may authorise the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2)If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors shall send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a company of articles of amendment designating a series of shares, the Registrar shall issue to the company a certificate of amendment in accordance with section 503.

(6) The articles of a company are amended accordingly on the date shown in the certificate of amendment issued under subsection (5).

Pre-emptive rights.

**34.** (1) If the articles so provide, no shares of a class shares may be issued unless the shares have first bee offered to the shareholders of the company holding shar of that class; and those shareholders have a pre-emptiv right to acquire the offered shares in proportion to the holdings of the shares of that class, at such price and such terms as those shares are to be offered to others.

(2) Notwithstanding that the articles of a compar provide the pre-emptive right referred to in subsection (1 the shareholders of the company have no pre-emptive rig in respect of shares to be issued by the company

(*a*) for a consideration other than mone

(*b*) pursuant to the exercise of conversic privileges, options or rights previous granted by the company.

Conversion privileges.

**35.**—(1) A company may grant conversion privilege options or rights to acquire shares of the company, b shall set out the conditions thereof in any certificates other instruments issued in respect thereof.

(2) Conversion privileges, options and rights acquire shares of a company may be made transferable non-transferable; and options and rights to acquire shar may be made separable or inseparable from any debentur or shares to which they are attached.

Reserve shares.

**36.** Where a company(a) has granted privileges convert any debentures or shares issued by the compa into shares or into shares of another class or series shares, or

(*b*) has issued or granted options or rights acquire shares,

if the articles of the company limit the number of authorised shares, the company shall reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.

Own shares.

**37.** (1) Subject to subsection (2), and except as provided in sections 38 to 41, a company shall not hold shares in itself or in its holding body corporate.

(2) A company shall cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within 5 years from the date, as the case requires,

(*a*) that the body corporate became a subsidiary of the company, or

(*b*) that the company was continued under this Act.

Exemptions.

**38.** (1) A company may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it, or the holding body corporate, or a subsidiary of either of them has a beneficial interest in the shares.

(2) A company may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Acquisition of own shares.

**39.** (1) Subject to subsection (2) and to its articles, a company may purchase or otherwise acquire shares issued by it.

(2) A company shall not make any payment purchase or otherwise acquire shares issued by it, if the are reasonable grounds for believing that

(a) the company is unable, or would, aft that payment, be unable to pay i liabilities as they become due, or

(b) the realisable value of the company assets would, after that payment, l less than the aggregate of its liabiliti and stated capital of all classes.

Other acquisition.

**40.**—(1) Notwithstanding subsection (2) of sec- tion 4 but subject to subsection (3) and to its articles, a compai may purchase or otherwise acquire its own issued share:

(a) to settle or compromise a debt or clai asserted by or against the company;

(b) to eliminate fractional shares; or

(c) to fulfil the terms of a non-assignab agreement under which the company has : option or is obligated to purchase shar owned by a director, an officer or : employee of the company.

(2) Notwithstanding subsection (2) of section 3 a company may purchase or otherwise acquire its ov issued shares

(a) to satisfy the claim of a sharehold who dissents under section 226, or

(b) to comply with an order und section 241.

(3) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

(*a*) the company is unable, or would, after the payment, be unable to pay its liabilities as they become due, or

(*b*) the realisable value of the company's assets would, after that payment, be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

Redeemable shares.

**41.**—(1) Notwithstanding subsection (2) of section 39 or subsection (3) of section 40, but subject to subsection (2) of this section and to its articles, a company may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

(2) A company shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

(*a*) the company is unable or would, after that payment, be unable to pay its liabilities as they become due, or

(*b*) the realisable value of the company's assets would, after that payment, be less than the aggregate of

(i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a winding up, rateably with or before the holders of the shares to be purchased or redeemed.

onated ares.

**42.** Subject to section 46, a company may accept from any shareholder a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 44.

oting ereon.

**43.** A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted thereon unless the company

(*a*) holds the shares in the capacity of a legal representative, and

(*b*) has complied with section 146.

ited pital duction.

**44.**—(1) Subject to subsection (3), a company may by special resolution reduce its stated capital by

(*a*) extinguishing or reducing a liability in respect of an amount unpaid on any share,

(*b*) returning any amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires any share or fraction thereof that it issued, and

(*c*) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A company shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that

(*a*) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due, or

(*b*) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(4) A company that reduces its stated capital under this section shall not later than 30 days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.

(5) A creditor may apply to the court for an order compelling a shareholder or other recipient

(*a*) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or

(*b*) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the act complained of.

(7) This section does not affect any liability that arises under section 85 or 86.

Stated capital adjustment.

**45.**—(1) Upon a purchase, redemption or other acquisition by a company under section 39, 40, 41, 57 or 226 or paragraph (f) of subsection (3) of section 241, of shares or fractions thereof issued by it, the company shall deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall deduct the amount of a payment made by the company to a shareholder under paragraph (g) of subsection (3) of section 241 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A company shall adjust its stated capital accounts in accordance with any special resolution referred to in subsection (2) of section 44.

(4) Upon a conversion of issued shares of a class into shares of another class, or upon a change under section 213, 236 or 241 of issued shares of a company into shares of another class or series, the company shall

(*a*) deduct, from the stated capital account maintained for the class or series of

shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

(*b*) add the result obtained under paragraph (a), and any additional consideration received by the company pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a company issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation of shares.

**46.** Shares or fractions of shares issued by a company and purchased, redeemed or otherwise acquired by the company shall be cancelled, or, if the articles of the company limit the number of authorised shares, the shares or fractions may be restored to the status of authorised, but unissued, shares.

Presumption re own shares.

**47.** For the purposes of sections 45 and 46, a compa holding shares in itself as permitted by section 38 deemed not to have purchased, redeemed or otherw acquired those shares.

Changing share class.

**48.**—(1) Shares issued by a company and converted changed under section 213, 236 or 241 into shares another class or series become issued shares of the class series of shares into which the shares have been conver or changed.

(2) Where its articles limit the number authorised shares of a class or series of shares o company and issued shares of that class or series h become, pursuant to subsection (1), issued shares another class or series, the number of unissued shares the first-mentioned class or series shall, unless the artic of amendment or reorganisation otherwise provide, increased by the number of shares that, pursuant subsection (1), became shares of another class or serie

Effect of purchase contract.

**49.**—(1) A contract with a company providing for purchase of shares of the company is specifica enforceable against the company except to the extent t the company cannot perform the contract without there being in breach of section 39 or 40.

(2) In any action brought on a contract referred in subsection (1), the company has the burden of provi that performance of the contract is prevented by section or 40.

(3) Until the company has fully performed contract referred to in subsection (1), the other pa retains the status of a claimant who is entitled

(*a*) to be paid as soon as the company lawfully able to do so, or

(*b*) to be ranked in a winding up subordinate to the rights of creditors but in priority to the shareholders.

Commission for share purchase.

**50.** The directors of a company acting honestly and in good faith with a view to the best interests of the company may authorise the company to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares.

Prohibited dividend.

**51.** A company shall not declare or pay a dividend if there are reasonable grounds for believing that

(*a*) the company is unable, or would, after the payment, be unable, to pay its liabilities as they become due, or

(*b*) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes

Payment of dividend.

**52.** Subject to subsection (2) a company may pay a dividend in money, in property, or by issuing fully paid shares of the company.

(2) A company shall not pay a dividend in money or in property out of unrealised profits.

(3) If shares of a company are issued in payment of a dividend, the value of the dividend stated as an amount in money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

llicit loans y company.

**53.** (1) When circumstances prejudicial to the compar exist, the company or any company with which it affiliated shall not, except as permitted by section 5 directly or indirectly, give financial assistance by means a loan, guarantee or otherwise,

(*a*) to a shareholder, director, officer employee of the company or affiliate company, or to an associate of any suc person for any purpose, or

(*b*) to any person for the purpose of, or connection with, a purchase of a shai issued or to be issued by the company or company with which it is affiliated.

(2) Circumstances prejudicial to the company exi in respect of financial assistance mentioned in sul section (1) when there are reasonable grounds for believir that

(*a*) the company is unable or would, aft giving the financial assistance, t unable to pay its liabilities as the become due, or

(*b*) the realisable value of the company assets, excluding the amount of ar financial assistance in the form of loan and in the form of assets pledge or encumbered to secure a guarante would, after giving the financi assistance, be less than the aggrega of the company's liabilities and state capital of all classes.

Permitted loans.

54. Notwithstanding section 53, a company may give financial assistance to any person by means of a loan, guarantee or otherwise

(*a*) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;

(*b*) on account of expenditures incurred or to be incurred on behalf of the company;

(*c*) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;

(*d*) to a subsidiary body corporate of the company;

(*e*) to employees of the company or any of its affiliates; and

(*f*) to shareholders of the company

(i) to enable or assist them to purchase or erect living accommodation for their own occupation,

(ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or

(iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

Enforcement of illicit loans.

**55.** A contract made by a company contrary to section 53 may be enforced by the company or by a lender for value in good faith without notice of the contravention.

Immunity of shareholders.

**56.** The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under subsection (5) of section 44 or subsection (2) of section 135.

Lien on shares.

**57.** (1) Subject to this Act, the articles of a company may provide that the company has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the company including an amount unpaid in respect of a share issued by a company on the date it was continued under this Act.

(2) A company may enforce a lien referred to in subsection (1) in accordance with its by-laws.

Duty of directors to manage company.

**58.** Subject to any unanimous shareholder agreement, the directors of a company shall

(*a*) exercise the powers of the company directly or indirectly through the employees and agents of the company, and

(*b*) direct the management of the business and affairs of the company.

Secretary.

**59.** (1) Every company shall have a secretary and may have one or more assistant secretaries, who, or each of whom

(*a*) shall be appointed by the director or directors, or if provision is made in the by-laws of a company for the appointment, in accordance with that provision; and

(*b*) may be an individual, a corporation or a firm.

(2) If a company carries on business for more than one month without complying with subsection (1) the company and every officer of the company who is in default is guilty of an offence.

Acts of Secretary, etc.

**60.**—(1) Anything required or authorised to be done by or in relation to the secretary, may, if the office is vacant, or if for any other reason the secretary is not capable of acting, be done by or in relation to any assistant secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the director or directors of the company.

(2) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of, the secretary.

Secretary of public company.

**61.**—(1) The directors of a public company shall take all reasonable steps to ensure that each secretary and assistant secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a public company.

(2) For the purpose of this section a person

(*a*) who, on the commencement date, held the office of secretary, assistant secretary or deputy secretary of a public company,

(*b*) who, for at least 3 years of the 5 years immediately preceding his appointment

as secretary, held the office of secretary of a public company,

(c) who is a member in good standing of a prescribed professional institute or other body,

(d) who is an attorney-at-law, or

(e) who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company,

may be assumed by a director of a public company to have the requisite knowledge and experience to discharge the functions of a secretary or assistant secretary of a public company, if the director does not know otherwise.

Number of directors.

**62.** (1) A company must have at least one director but a public company shall have no fewer than three directors, at least 2 of whom are not officers or employees of the company or any of its affiliates.

(2) Only an individual may be a director of a public company.

Restricted powers.

**63.** If the powers of the directors of a company to manage the business and affairs of the company are in whole or in part restricted by the articles of the company, the directors have all the rights, powers and duties of the directors to the extent that the articles do not restrict those powers; but the directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers.

By-Law powers.

**64.**—(1) Unless the articles, by-laws, or unanimous shareholder agreement otherwise provides, the directors of a company may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the company.

(2) The directors of a company shall submit a by-law, or any amendment or repeal of a by-law made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the by-law; and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.

(3) A by-law, or any amendment or repeal of a by-law, is effective from the date of the resolution of the directors making, amending or repealing the by-law until

(*a*) the by-law, amendment or repeal is confirmed, amended or rejected by the shareholders pursuant to subsection (2), or

(*b*) the by-law, amendment or repeal ceases to be effective pursuant to subsection (4);

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or

repeal a by-law having substantially the same purpose effect is effective until the resolution is confirmed, with without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at annual meeting of shareholders may, in accordance wi sections 114 to 122, make a proposal to make, amend repeal a by-law.

(6) No by-law made by a company referred to this section may contradict the articles of that company.

Organisational meeting.

**65.**—(1) After the issue of a certificate of incorporati of a company, a meeting of the directors of the compa shall be held at which the directors may

(*a*) make by-laws;

(*b*) adopt forms of share certificates a corporate records;

(*c*) authorise the issue of shares;

(*d*) appoint officers;

(*e*) appoint an auditor to hold office until t first annual meeting of shareholders;

(*f*) make banking arrangements; and

(*g*) transact any other business.

(2) An incorporator or a director may call meeting of directors referred to in subsection (1) by givi by post not less than 7 clear days' notice of the meeting each director and stating in the notice the time and place the meeting.

(3) Subsection (1) does not apply to a company to which a certificate of amalgamation has been issued under section 225.

Disqualified directors.

**66.**—(1) An individual who is prohibited by subsection (2) of section 4 from forming or joining in the formation of a company may not be a director of any company.

(2) When an individual is disqualified under section 67 from being a director of a company, that individual may not, during that period of disqualification, be a director of any company.

Court disqualified directors.

**67.**—(1) When, on the application of the Registrar, it is made to appear to the court that an individual is unfit to be concerned in the management of a public company, the court may order that, without the prior leave of the court, he may not be a director of the company, or, in any way, directly or indirectly, be concerned with the management of the company for such period

(*a*) beginning

(i) with the date of the order, or

(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison, and

(*b*) not exceeding 5 years,

as may be specified in the order.

(2) In determining whether or not to make a order under subsection (1), the court shall have regard t all the circumstances that it considers relevant, includin any previous convictions of the individual in Grenada o elsewhere for an offence involving fraud or dishonesty o in connection with the promotion, formation o management of any body corporate.

(3) Before making an application under this sectio in relation to any individual, the Registrar shall give tha individual not less than 10 days' notice of the Registrar' intention to make the application.

(4) On the hearing of an application made by th Registrar under this section or an application for leav under this section to be concerned with the management o a public company, the Registrar and any individua concerned with the application may appear and cal attention to any matters that are relevant, and may giv evidence, call witnesses and be represented by a attorney-at-law.

No qualification required.

**68.** Unless the articles of a company otherwise provide a director of the company need not hold shares issued b the company.

Notice of directors.

**69.** (1) At the time of sending articles of incorporatio of a company to the Registrar, the incorporators shall sen him, in the prescribed form, a notice of the names of th directors of the
company; and the Registrar shall file the notice.

(2) Each director named in the notice referred t in subsection (1) holds office as a director of the compan from the issue of the certificate of incorporation of th company until the first meeting of the shareholders of th company.

(3) Subject to paragraph (b) of section 71, the shareholders of a company, shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

(4) It is not necessary that all the directors of a company elected at a meeting of shareholders hold office for the same term.

(5) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(6) Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(7) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the company, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.

(8) The articles of a company or an unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or employees of the company or by any classes of these creditors or employees.

Alternate directors.

**70.**—(1) A meeting of the shareholders of a company may, by ordinary resolution, elect a person to act as a director in the alternative to a director of the company, or may authorise the directors to appoint such alternative directors as are necessary for the proper discharge of the affairs of the company.

(2) An alternate director shall have all the rights and powers of the director for whom he is elected or appointed in the alternative, except that he shall not be entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

Cumulative voting.

**71.** Where the articles of a company provide for cumulative voting, the following rules apply:

(*a*) the articles shall require a fixed number, and not a minimum and maximum number of directors;

(*b*) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his votes in favour of one candidate, or distribute them among the candidates in any manner;

(*c*) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;

(*d*) if a shareholder votes for more than one candidate without specifying the distribution of his votes among the candidates, he

distributes his votes equally among the candidates for whom he votes;

(*e*) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

(*f*) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;

(*g*) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and

(*h*) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Terminatio of office.

72.—(1) A director of a company ceases to hold office when

(*a*) he dies or resigns,

(*b*) he is removed in accordance with section 73,

(c) he becomes disqualified under section 66 or 67.

(2) The resignation of a director of a company becomes effective at the time his written resignation is sent to the company or at the time specified in the resignation, whichever is later.

Removal of directors.

**73.** (1) Subject to paragraph (g) of section 71, the shareholders of a company may

(a) by ordinary resolution at a special meeting, remove any director from office.

(b) where a director was elected for a term exceeding one year and is not up for re-election at an annual meeting, remove such director by ordinary resolution at that meeting.

(2) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to paragraph (b) to (e) of section 71, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 75.

Right to notice.

**74.**—(1) A director of a company is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders.

(2) A director

(*a*) who resigns,

(*b*) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or

(*c*) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) The company shall forthwith send a copy of the statement referred to in subsection (2) to the Registrar and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).

(4) No company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancy

**75.**—(1) Subject to subsections (3) and (4), a quorum of directors of a company may fill a vacancy among the directors of the company, except a vacancy resulting from an increase in the number or minimum number of directors, or from a failure to elect the number or minimum number of directors required by the articles of the company.

(2) If there is no quorum of directors, or if ther has been a failure to elect the number or minimum numbe of directors required by the articles, the directors then i office shall forthwith call a special meeting of shareholder to fill the vacancy; and, if they fail to call a meeting, or there are no directors then in office, the meeting may b called by any shareholder.

(3) Where the holders of any class or series c shares of a company have an exclusive right to elect one c more directors and a vacancy occurs among those director

(*a*) then, subject to subsection (4), th remaining directors elected by tha class or series may fill the vacanc except a vacancy resulting from a increase in the number or minimur number of directors for that class c series, or from a failure to elect th number or minimum number c directors for that class or series, or

(*b*) if there are no such remainin directors, any holder of shares of tha class or series may call a meeting o the holders thereof for the purpose o filling the vacancy.

(4) The articles of a company may provide that vacancy among the directors be filled only

(*a*) by a vote of the shareholders, or

(*b*) by a vote of the holders of any clas or series of shares having an exclusiv right to elect one or more directors, i

the vacancy occurs among the directors elected by that class or series.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

Numbers changed.

**76.** The shareholders of a company may amend the articles of the company to increase or, subject to paragraph (h) of section 71 to decrease, the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of the incumbent director.

Notice of change.

**77.**—(1) Within 15 days after a change is made among its directors, a company shall send to the Registrar a notice in the prescribed form setting out the change; and the Registrar shall file the notice.

(2) Any interested person, or the Registrar, may apply to the court for an order to require a company to comply with subsection (1); and the court may so order and make any further order it thinks fit.

Directors' meetings.

**78.**—(1) Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors; and notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Notice and waiver.

**79.**—(1) A notice of a meeting of the directors of a company shall specify any matter referred to in subsection (2) of section 83 that is to be dealt with at the

meeting; but, unless the by-laws of the company otherwi provide, the notice need not specify the purpose of or tl business to be transacted at the meeting.

(2) A director may, in any manner, waive a noti of a meeting of directors; and attendance of a director at meeting of directors is a waiver of notice of the meeting t the director except when he attends the meeting for tl express purpose of objecting to the transaction of ar business on the grounds that the meeting is not lawful called.

djourned eeting.

**80.** Notice of an adjourned meeting of directors need n be given if the time and place of the adjourned meeting announced at the original meeting.

elephone articipation.

**81.** (1) Subject to the by-laws of a company, a direct may, if all the directors of the company consent, participa in a meeting of directors of the company or of a committe of the directors by means of such telephone or oth communication facilities as permit all persons participatir in the meeting to hear each other.

(2) A director who participates in a meeting directors by such means as are described in subsection (1 is, for the purposes of this Act, present at the meeting.

elegation powers.

**82.**—(1) Directors of a company may appoint from the number a managing director or a committee of directo and delegate to the managing director or committee any the powers of the directors.

(2) Notwithstanding subsection (1), no managin director and no committee of directors of a company ma

(*a*) submit to the shareholders an question or matter requiring th approval of the shareholders;

(*b*) fill a vacancy among the directors or in the office of auditor;

(*c*) issue shares except in the manner and on the terms authorised by the directors;

(*d*) declare dividends;

(*e*) purchase, redeem or otherwise acquire shares issued by the company;

(*f*) pay a commission referred to in section 50;

(*g*) approve a management proxy circular referred to in Division F;

(*h*) approve any financial statements referred to in section 149; or

(*i*) adopt, amend or repeal by-laws.

Validity of acts.

**83.** An act of a director or officer is valid notwithstanding any irregularity in his election or appointment, or any defect in his qualification.

Resolution in writing.

**84.**—(1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors,

(*a*) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors, and

(*b*) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

ability r share ue.

**85.** Directors of a company who vote for or consent to a resolution authorising the issue of a share under section 29 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

liability r other ts.

**86.** Directors of a company who vote for, or consent to, a resolution authorising

(*a*) a purchase, redemption or other acquisition of shares contrary to section 39, 40 or 41;

(*b*) a commission contrary to section 50;

(*c*) a payment of a dividend contrary to section 51 or 52;

(*d*) financial assistance contrary to section 53;

(*e*) a payment of an indemnity contrary to any of he provisions of sections 226 to 235 or 241,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

ontribution or judgment.

**87.** A director who has satisfied a judgment founded on a liability under section 85 or 86 is entitled to contribution

from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Recovery by action.

**88.**—(1) A director who is liable under section 86 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 39, 40, 41, 50, 51, 52, 53 or 54.

(2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so,

(*a*) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of section 39, 40, 41, 50, 51, 52, 53, 54, 99 to 103, 226 to 235 or 241,

(*b*) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares, or

(*c*) make any further order it thinks fit.

Defence to liability.

**89.** A Director of a company is not liable under section 85 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money.

me limit liability.

**90.** An action to enforce a liability imposed under section 85 or 86 may not be commenced after 2 years from the date of the resolution authorising the action complained of.

terests in ntracts.

**91.** (1) A director or officer of a company

(*a*) who is a party to a material contract or proposed material contract with the company, or

(*b*) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company,

shall disclose in writing to the company or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director of a company,

(*a*) at the meeting at which a proposed contract is first considered;

(*b*) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;

(*c*) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or

(*d*) if a person who is interested in a contract later becomes a director of

the company, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer of a company who is not a director,

(*a*) forthwith after he becomes aware that the contract or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;

(*b*) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or

(*c*) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer.

(4) If a material contract or a proposed material contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of the company shall disclose in writing to the company, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director of a company who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract,

(*a*) is an arrangement by way of security for money loaned to, or obligations

undertaken by him, for the benefit of the company or an affiliate of the company;

(*b*) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the company or an affiliate of the company;

(*c*) is a contract for indemnity or insurance under sections 99 to 103;

(*d*) is a contract with an affiliate of the company; or

(*e*) is a contract other than one referred to in paragraphs (a) to (d);

but, in the case of a contract described in paragraph (e), no resolution is valid unless notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail to the shareholders of the company and the resolution is approved by not less than two-thirds of the votes.

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laration.

**92.** For the purposes of section 91, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract

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lity.

**93.** A material contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company

is a director or officer, or in which he has a material interest, is neither void nor voidable

(*a*) by reason only of that relationship, or

(*b*) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at, a meeting of directors or a committee of directors that authorised the contract

if the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 91 or section 92, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

Setting aside contract.

**94.** When a director or officer of a company fails to disclose, in accordance with section 91 or 92, his interest in a material contract made by the company, the court may, upon the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

Designation of offices, etc.

**95.** Subject to this Act and to the articles or by-laws of a company or any unanimous shareholder agreement,

(*a*) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in subsection (2) of section 82;

(*b*) a director may be appointed to any office of the company; and

(c) 2 or more offices of the company may be held by the same person.

owing ers.

**96.**—(1) Unless the articles or by-laws of, or any unanimous shareholder agreement relating to,the company otherwise provide, the directors of the company may, without authorisation of the shareholders,

(a) borrow money upon the credit of the company;

(b) issue, re-issue, sell or pledge debentures of the company;

(c) subject to section 53, give a guarantee on behalf of the company to secure performance of an obligation of any person; and

(d) mortgage, charge, pledge, or otherwise create to secure any obligation of the company or any other person a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding subsection (2) of section 82 and paragraph (a) of section 95, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or any officer of the company.

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**97.**—(1) Every director and officer of a company in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of the company; and

(*b*) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what are the best interests of a company, a director may have regard to the interests of the company's employees in general as well as to the interests of its shareholders.

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the

company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) No information about the business or affairs of a company shall be disclosed by a director or officer of the company except

(*a*) for the purposes of the exercise or performance of his functions as a director or officer;

(*b*) for the purposes of any legal proceedings;

(*c*) pursuant to the requirements of any enactment, or

(*d*) when authorised by the company

(5) Every director and officer of a company shall comply with this Act and the regulations, and with the articles and by-laws of the company, and any unanimous shareholder agreement relating to the company.

(6) Subject to subsection (2) of section 135, no provision in a contract, the articles of a company, its

by-laws or any resolution, relieves a director or officer of the company from the duty to act in accordance with this Act or the regulations, or relieves him from liability for a breach of this Act or the regulations.

senting esolutions.

**98.** (1) A director who is present at a meeting of the directors or of a committee of directors consents to any resolution passed or action taken at that meeting, unless

(*a*) he requests that his dissent be or his dissent is entered in the minutes of the meeting,

(*b*) he sends his written dissent to the secretary of the meeting before the meeting is adjourned, or

(*c*) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for, or consents to, a resolution may not dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is presumed to have consented thereto unless, within 7 days after he becomes aware of the resolution, he

(*a*) causes his dissent to be placed with the minutes of the meeting, or

(*b*) sends his dissent by registered post or delivers it to the registered office of the company.

(4) A director is not liable under section 85, 86 or 97 if he relies in good faith upon

(a) financial statements of the company represented to him by an officer of the company, or

(b) a report of an attorney-at-law, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnifying directors, etc.

**99.** (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify

(*a*) a director or officer of the company,

(*b*) a former director or officer of the company, or

(*c*) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified

(*a*) acted honestly and in good faith with a view to the best interests of the company, and

(*b*) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

derivative on.

**100.** A company may with the approval of the court indemnify a person referred to in section 99 in respect of an action

(*a*) by or on behalf of the company or body corporate to obtain a judgment in its favour, and

(*b*) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in subsection (2) of section 99.

ht to emnity.

**101.** Notwithstanding anything in section 99 or 100, a person described in section 99 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity

(*a*) was substantially successful on the merits in his defence of the action or proceeding,

(*b*) qualified in accordance with the standards set out in section 99 or 100, and

(*c*) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

**102.** A company may purchase and maintain insurance for the benefit of any person referred to in section 99 against any liability incurred by him under paragraph (b) of subsection (1) of section 97 in his capacity as a director or officer of the company.

Court approval of indemnity.

**103.**—(1) A company or person referred to in section 99 may apply to the court for an order approving an indemnity under section 100 or 101; and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(3) Upon an application under subsection (1), the court may order notice to be given to any interested person; and that person may appear and be heard in person or by an attorney-at-law.

Remuneration.

**104.** Subject to its articles or by-laws, or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

## Division E: Shareholders of Companies

Shareholders and their meetings.

**105.**—(1) The following persons are shareholders in a company, namely—

(*a*) a person who is a member of the company under subsection (3) of section 371;

(*b*) the personal representative of a deceased shareholder and the trustee in bankruptcy of a bankrupt shareholder;

(c) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if two or more such transfers have been executed, the person in whose favour the most recent transfer has been made.

(2) In this Act any reference to holders of shares is a reference to persons who are shareholders in respect of the shares and any reference to holding shares shall be construed accordingly.

(3) For the purposes of this Act shares shall be considered as having been issued if any person is a shareholder in respect of them.

(4) Meetings of shareholders of a company shall be held at the place within Grenada provided in the by-laws, or, in the absence of any such provision, at the place within Grenada that the directors determine.

(5) Notwithstanding subsection (4), a meeting of shareholders of a company may be held outside Grenada if all the shareholders entitled to vote at the meeting so agree.

(6) A shareholder who attends a meeting of shareholders held outside Grenada agrees to its being so held unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

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la. **106.** Notwithstanding section 105, if the articles of a company so provide, meetings of shareholders of the company may be held outside Grenada at one or more places specified in the articles.

Calling meetings.

**107.** The directors of a company

(*a*) shall call an annual meeting of shareholders not later than 18 months after the company comes into existence, and subsequently not later than 15 months after holding the last preceding annual meeting; and

(*b*) may at any time call a special meeting of shareholders.

Record date of shareholders.

**108.**—(1) For the purpose of

(*a*) determining the shareholders of the company who are

(i) entitled to receive payment of a dividend, or

(ii) entitled to participate in a winding-up distribution, or

(*b*) determining the shareholders of the company for any other purpose except the right to receive notice of, or to vote at, a meeting,

the directors may fix in advance a date as the record date for the determination of shareholders; but that record date shall not precede by more than 30 days the particular action to be taken.

(2) For the purpose of determining shareholders who are entitled to receive notice of a meeting of shareholders of the company, the directors of the company may fix in advance a date as the record date for the determination of shareholders; but the record date shall not precede by more than 30 days or by less than 7 days the date on which the meeting is to be held.

Statutory date.

**109.** If no record date is fixed,

(*a*) the record date for determining the shareholders who are entitled to receive a notice of a meeting of the shareholders is

(i) the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held; and

(*b*) the record date for the determination of shareholders for any purpose other than the purpose specified in paragraph (a) is the close of business on the day on which the directors pass the resolution relating to that purpose.

Notice of record date.

**110.** If a record date is fixed under section 108 notice thereof shall, in the case of a public company, be given by advertisement in a newspaper published in Grenada not less than 7 days before the date so fixed.

Notice of meeting.

**111.**—(1) Notice of the time and place of a meeting of shareholders shall be sent not less than 7 days nor more than 30 days before the meeting

(*a*) to each shareholder entitled to vote at the meeting;

(*b*) to each director; and

(*c*) to the auditor of the company.

(2) A notice of a meeting of shareholders of a company is not required to be sent to shareholders of the company who were not registered on the records of the company or its transfer agent on the record date determined under section 108 or 109, as the case may be; but failure to receive notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned for less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting; but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, subsection (1) of section 141 does not apply.

Special business.

**112.**—(1) All business transacted at a special meeting of shareholders, and all business transacted at an annual meeting of shareholders, is special business, except

(*a*) the consideration of the financial statements,

(*b*) the directors' report, if any

(*c*) the auditor's report, if any

(*d*) the sanction of dividends,

(*e*) the election of directors, and

(*f*) the re-appointment of the incumbent auditor.

(2) Notice of a meeting of shareholders at which special business is to be transacted shall state:

(*a*) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

(*b*) the text of any special resolution to be submitted to the meeting.

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**113.**—(1) A shareholder and any other person who is entitled to attend a meeting of shareholders may in any manner waive notice of the meeting; and the attendance of any person at a meeting of shareholders is a waiver of notice of the meeting by that person, unless he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(2) Subject to the by-laws of a company, a shareholder may, if all the shareholders of the company consent, participate in a meeting of shareholders of the company by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other.

(3) A shareholder who participates in a meeting of shareholders by such means as are described in subsection (2) is, for the purposes of this Act, present at the meeting.

Proposals" shareolders.

**114.** A shareholder of a company who is entitled to vote at an annual meeting of the shareholders may

(*a*) submit to the company notice of any matter that he proposes to raise at the meeting, in this Division referred to as a "proposal", and

(*b*) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

Proxy circular.

**115.**—(1) A company that solicits proxies shall set the proposal out in the management proxy circular required by section 141 or attach the proposal to that circular.

(2) If so requested by a shareholder who submits a proposal to a company, the company shall include in the management proxy circular, or attach to it, a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

Nomination in proposal.

**116.** A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares who represent in the aggregate not less than

(*a*) 5 percent of the shares of the company, or

(*b*) 5 percent of the shares of a class of shares of the company,

entitled to vote at a meeting to which the proposal is to be presented; but this subsection does not preclude nominations made at a meeting of shareholders of a company that is not required to solicit proxies under section 141.

Non-compliance with proxy solicitation.

**117.** A company is not required to comply with subsection (2) of section 115 if

(*a*) the proposal is not submitted to the company at least 90 days before the anniversary date of the previous annual meeting of shareholders of the company;

(*b*) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers, shareholders or debenture holders or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

(*c*) the company, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of that request and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(*d*) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the shareholder's request and the proposal was defeated; or

(*e*) the rights conferred by that subsection are being abused to secure publicity.

**118.** No company, or person acting on its behalf, incurs any liability by reason only of circulating a proposal or statement in compliance with this Act.

**119.** When a company refuses to include a proposal in a management proxy circular, the company shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal

from the management proxy circular; and the company shall send him a statement of the reasons for its refusal.

Restraining meeting.

**120.** Upon application to the court by a shareholder of a company who is claiming to be aggrieved by the company's refusal under section 119 to include a proposal in a management proxy circular, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Right to omit proposal.

**121.** A company or any person claiming to be aggrieved by a proposal submitted to the company may apply to the court for an order permitting the company to omit the proposal from its management proxy circular; and the court may, if it is satisfied that section 117 applies, make such order as it thinks fit.

Registrar's notice.

**122.** An applicant under section 120 or 121 shall give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law.

List of shareholders.

**123.**—(1) A company shall

(*a*) not later than 10 days after the record date is fixed under subsection (2) of section 108, if a record date is so fixed, or

(*b*) if no record date is fixed,

(i) at the close of business on the date immediately preceding the day on which the notice is given, or

(ii) if no notice is given, as of the day on which the meeting is held,

prepare a list of its shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

(2) When a company fixes a record date under subsection (2) of section 108, a person named in the list prepared under paragraph (a) of subsection (1) is, subject to subsection (3) entitled, at the meeting to which the list relates to vote the shares shown opposite his name.

(3) Where a person has transferred the ownership of any of his shares in a company after the record date fixed by the company, if the transferee of those shares

(*a*) produces properly endorsed share certificates to the company or otherwise establishes to the company that he owns the shares, and

(*b*) demands, not later than 10 days before the meeting of the shareholders of the company, that his name be included in the list of shareholders before the meeting,

the transferee may vote his shares at the meeting.

(4) When a company does not fix a record date under subsection (2) of section 108, a person named in a list of shareholders prepared under paragraph (b) of subsection (1) may, at the meeting to which the list relates, vote the shares shown opposite his name.

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**124.** A shareholder of a company may examine the list of its shareholders

(*a*) during usual business hours at the registered office of the company or at the place where its register of shareholders is maintained, and

(*b*) at the meeting of shareholders for which the list was prepared.

Quorum at meetings.

**125.**—(1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present within 30 minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day 2 weeks thereafter, at the same time and place; and, if at the adjourned meeting, a quorum is not present within 30 minutes of the appointed time, the shareholders present constitute a quorum.

(4) When a company has only one shareholder, or has only one shareholder of any class or series of shares, that shareholder present in person or by proxy constitutes a meeting.

Right to vote share.

**126.** Unless the articles of the company otherwise provide, on a show of hands a shareholder or proxy holder has one vote; and upon a poll a shareholder or proxy holder has one vote for every share held.

Representative of other body.

**127.**—(1) When a body corporate or association is a shareholder of a company, the company shall recognise any individual authorised by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorised as described in subsection (1) may exercise, on behalf of the body corporate or association that he represents, all the powers it could exercise if it were an individual shareholder.

int share-lders.

**128.** Unless the by-laws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if 2 or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

oting ethod at eetings.

**129.**—(1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by a show of hands, except when a poll is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a poll either before or after any vote by show of hands.

esolution writing.

**130.**—(1) Except where a written statement is submitted by a director under section 74 or an auditor under section 170,

(*a*) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders, and

(*b*) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the

meetings of shareholders but failure so to keep such copy does not render void any action taken by the company.

Requisitioned shareholders meeting.

**131.**—(1) The holders of not less than 5 percent of the issued shares of a company that carry the right to vote at a meeting sought to be held by them may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form, each signed by one or more shareholders of the company, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the company.

(3) Upon receiving a requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless

(*a*) a record date has been fixed under subsection (2) of section 108 and notice thereof has been given under section 110;

(*b*) the directors have called a meeting of shareholders and have given notice thereof under section 111; or

(*c*) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 117.

(4) If, after receiving a requisition referred to in subsection (1), the directors do not call a meeting of shareholders within 21 days after receiving the requisition,

any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Division and Division F.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the company shall reimburse the shareholders who requisitioned the meeting the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

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**132.**—(1) Upon the application to the court by a director of a company or a shareholder of the company who is entitled to vote at a meeting of the shareholders, or by the Registrar, the court may,

(*a*) when for any reason it is impracticable

(i) to call a meeting of shareholders in the manner in which meetings of shareholders can be called, or

(ii) to conduct the meeting in the manner prescribed by the by-laws and this Act, or

(*b*) when the directors fail to call a meeting of the shareholders in contravention of section 131, or

(*c*) for any other reason thought fit by the court,

order a meeting of shareholders to be called, held and conducted in such manner as the court may direct.

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting of the shareholders of a company called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the company duly called, held and conducted.

Court review controversy.

133.—(1) A company or a shareholder or director thereof may apply to the court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application made under this section, the court may make any order it thinks fit including,

(*a*) an order restraining a director or auditor whose election or appointment is challenged from acting, pending determination of the dispute;

(*b*) an order declaring the result of the disputed election or appointment;

(*c*) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held, or appointment made; and

(*d*) an order determining the voting rights of shareholders and of persons claiming to own shares.

ng ment.

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

limous holder ment.

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

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

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

(4) Where any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination thereof, shall be filed with the Registrar within 15 days after the execution or termination.

ra- inary nsaction.

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

(2) A notice of a meeting of shareholders complying with section 111 shall be sent in accordance with that section to each shareholder and shall

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

(*b*) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 226;

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

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

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

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

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote thereon

have, by special resolution, approved of the sale, lease or exchange.

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

### Division F: Proxies

finitions. **137.** (1) In this Part,

"form of proxy" means a written or printed form that, upon completion and signature by or on behalf of a shareholder, becomes a proxy;

"proxy" means a completed and signed form of proxy by means of which a shareholder appoints a proxy holder to attend and act on his behalf at a meeting of shareholders;

"registrant" means a broker or dealer required to be registered to trade or deal in shares or debentures under the law of any jurisdiction;

"solicit" or "solicitation" includes, subject to subsection (2),

(*a*) a request for a proxy, whether or not accompanied with or included in a form of proxy;

(*b*) a request to execute or not to execute a form of proxy or to revoke a proxy; and

(*c*) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy;

"solicitation by or on behalf of the management of a company" means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors of the company concerned.

(2) The term "solicit" or "solicitation" does not include

(*a*) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder;

(*b*) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;

(*c*) the sending by a registrant of the documents referred to in section 146; or

(*d*) a solicitation by a person in respect of shares of which he is the beneficial owner.

Proxy appointment.

**138.** (1) A shareholder who is entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder, or one or more alternate proxy holders,

none of whom need be shareholders, to attend and act at the meeting in the manner and to the extent authorised by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed in writing by the shareholder or his attorney authorised in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

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**139.** A shareholder of a company may revoke a proxy

(*a*) by depositing an instrument in writing executed by him or by his attorney authorised in writing,

(i) at the registered office of the company at any time, up to and including the last business day preceding the day of the meeting, or any adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chairman of the meeting on the day of the meeting or any adjournment of that meeting, or

(*b*) in any other manner permitted by law.

osit roxy.

**140.**—(1) The directors of a company may specify in a notice calling a meeting of the shareholders of the company a time not exceeding 48 hours preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting shall be deposited with the company or its agent.

(2) In the calculation of time for the purposes of subsection (1), Saturdays and holidays are to be excluded.

Mandatory solicitation of proxy.

**141.**—(1) Subject to subsection (2), the management of a company shall, concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) Where a company has fewer than 15 shareholders, 2 or more joint shareholders being counted as one, the management of the company need not send a form of proxy under subsection (1).

Prohibited solicitation.

**142.** A person shall not solicit proxies unless there is sent to the auditor of the company, to each shareholder whose proxy is solicited and to the company if the solicitation is not by or on behalf of the management of the company,

(*a*) a management proxy circular in the prescribed form, either as an appendix to, or as a separate document accompanying the notice of the meeting, when the solicitation is by or on behalf of the management of the company; or

(*b*) a dissident's proxy solicitation, in the prescribed form stating the purpose of the solicitation, when the solicitation is not by or on behalf of the management of the company.

Documents for Registrar.

**143.** A person required to send a management proxy circular or dissident's proxy circular shall concurrently send a copy thereof to the Registrar, together with a copy

of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting.

iption egistrar.

**144.** Upon the application of an interested person, the Registrar may, on such terms as he thinks fit, exempt that person from any of the requirements of section 141 or 142, and the exemption may be given retroactive effect by the Registrar.

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**145.**—(1) A person who solicits a proxy and is appointed proxy holder shall

(*a*) attend in person, or cause an alternate proxy holder to attend, the meeting in respect of which the proxy is given, and

(*b*) comply with the directions of the shareholder who appointed him.

(2) A proxy holder or an alternate proxy holder has the same rights as the shareholder who appointed him

(*a*) to speak at the meeting of shareholders in respect of any matter,

(*b*) to vote by way of ballot at the meeting, and

(*c*) except when a proxy holder or an alternate proxy holder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

istrant's

**146.**—(1) Shares of a company that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant may not be voted unless the

registrant forthwith after the receipt thereof sends to the beneficial owner

(*a*) a copy of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents sent to shareholders by or on behalf of any person for use in connection with the meeting, other than the form of proxy, and

(*b*) except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant may not vote or appoint a proxy holder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner of the shares.

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1).

(4) A registrant shall vote or appoint a proxy holder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner of shares of a company, the registrant of those shares shall appoint the beneficial owner or a nominee of the beneficial owner as proxy holder for those shares.

(6) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken at the meeting.

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**147.** Nothing in section 146 gives a registrant the right to vote shares that he is otherwise prohibited from voting.

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**148.**—(1) If a form of proxy, management proxy circular or dissident's proxy circular

(*a*) contains an untrue statement of a material fact, or

(*b*) omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

an interested person or the Registrar may apply to the court.

(2) On an application under this section the court may make any order it thinks fit, including any or all of the following orders:

(*a*) an order restraining the solicitation or the holding of the meeting or restraining any person from implementing or acting upon any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;

(*b*) an order requiring correction of any form of proxy or proxy circular and a further solicitation; or

(*c*) an order adjourning the meeting.

(3) An applicant under this section other than the Registrar shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

### Division G: Financial Disclosure

Annual financial returns.

**149.**—(1) Subject to this section and to section 150, the directors of a company shall place before the shareholders at every annual meeting of the shareholders of the company:

(*a*) comparative financial statements, as prescribed, relating separately to

(i) the period that began on the date the company came into existence and ended not more than 12 months after that date, or, if the company has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than 12 months after the beginning of that period, and

(ii) the immediately preceding financial year:

(*b*) the report of the auditor, if any; and

(*c*) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.

(2) The financial statements required by sub-paragraph (ii) of paragraph (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

(3) The Registrar may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.

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**150.** Upon the application of a company for authorisation to omit from its financial statements any prescribed item, or to dispense with the publication of any particular prescribed financial statement, the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.

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**151.**—(1) A company shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate the accounts of which are consolidated in the financial statements of the company.

(2) Shareholders of a company and their agents and legal representatives may, upon request therefor, examine the statements referred to in subsection (1) during the usual business hours of the company, and may make extracts from those statements, free of charge.

(3) A company may, within 15 days of a request to examine statements under subsection (2), apply to the court for an order barring the right of any person to examine those statements; and the court may, if it is satisfied that the examination would be detrimental to the company or a subsidiary body corporate, bar that right and make any further order the court thinks fit.

(4) A company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3); and the Registrar and that person may appear and be heard in person or by an attorney-at-law.

Approval of directors.

**152.**—(1) The directors of a company shall approve the financial statements referred to in section 149, and the approval shall be evidenced by the signature of 1 or more directors.

(2) A company shall not issue, publish or circulate copies of the financial statements referred to in section 149 unless the financial statements are

(*a*) approved and signed in accordance with subsection (1), and

(*b*) accompanied by a report of the auditor of the company, if any.

Copies of documents to be sent to shareholders.

**153.**—(1) Not less than 21 days before each annual meeting of the shareholders of a company or before the signing of a resolution under para-graph (b) of sub-section (1) of section 130 in lieu of its annual meeting, the company shall send a copy of the documents referred to in section 149 to each shareholder, except a shareholder who has informed the company in writing that he does not want a copy of those documents.

(2) Notwithstanding subsection (1), a public company whose shares, or any class of whose shares, are listed need not, in such cases as may be prescribed and provided any prescribed conditions are complied with, send copies of the documents referred to in section 149 to shareholders of the company, but may instead send them a summary financial statement.

(3) The summary financial statement shall be derived from the company's annual accounts and the directors' report and shall be in the prescribed form and contain the prescribed information.

(4) Every summary financial statement shall

(*a*) state that it is only a summary of information in the company's annual accounts and the directors' report;

(*b*) contain a statement of the company's auditors of their opinion as to whether the summary financial statement is consistent with those accounts and that report and complies with the requirements of this section and the regulations;

(*c*) state whether the auditors' report on the annual accounts was unqualified or qualified, and if it was qualified set out the report in full together with any further material needed to understand the qualification;

(*d*) state whether the auditors' report on the annual accounts contained a statement as to

(i) the inadequacy of the accounting records or returns;

(ii) the accounts not agreeing with the records or returns, or

(iii) the failure to obtain necessary information or explanations,

(5) In subsection (2) "listed" means admitted to the official list of the Stock Exchange of Grenada, or a regional Stock Exchange of the Organization of Eastern Caribbean States or of CARICOM if Grenada belongs to such regional Stock Exchange.

Registrar's copies.

154.—(1) A company

(*a*) that is a public company, or

(*b*) the gross revenue of which, as shown in the most recent financial statements referred to in section 149, exceed $2,000,000 or the assets of which as shown in those financial statements exceed $1,000,000, or such greater amounts as may be prescribed

shall send a copy of the documents referred to in section 149 to the Registrar, not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 130 in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) For the purposes of paragraph (b) of subsection (1), the gross revenues and assets of a company include the gross revenues and assets of its affiliates.

(3) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.

(4) If a company referred to in subsection (1)

(*a*) sends interim financial statements or related documents to its shareholders, or

(*b*) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognised stock exchange,

the company shall forthwith send copies thereof to the Registrar.

(5) A subsidiary company is not required to comply with this section if

(*a*) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and

(*b*) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with this section.

ıration of ncy.

**155.**—(1) Subject to this section, a company that is not pursuant to subsection (1) of section 154 required to send to the Registrar a copy of the documents referred to in section 149, shall within the period specified in the said subsection send to the Registrar

(*a*) a certificate of solvency signed by at least one director on behalf of the board and by the auditor, if any, containing the statements and opinions required by subsection (2) made with reference to the company's assets and liabilities at the date on which the financial statements of the company laid before the annual general meeting or, as the case may be, of the signing of a resolution under paragraph (*b*) of subsection (1) of

section 130 in lieu of the annual meeting, and

(*b*) a certificate signed by at least one director on behalf of the board and by the auditor, if any, that the certificate referred to in paragraph (*a*) agrees with the balance sheet and profit and loss account which form part of the financial statements.

(2) A certificate of solvency shall state

(*a*) the amounts shown in the company's balance sheet as the total values respectively of the company's fixed assets, current assets investments and other assets;

(*b*) the amount shown in the company's balance sheet as the total amount of the company's debt and liabilities, accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out and the amount so shown as the total amount of the company's other debts and liabilities; and

(*c*) whether, in the opinion of the auditor, or if there is no auditor, of each director, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.

(3) If the auditor of a company refuses to give or sign either of the certificates mentioned in subsection (2), a note of his refusal shall be endorsed on the certificate.

(4) A director or auditor of a company who signs or sends to the Registrar or concurs in the sending to the Registrar of a certificate required by this section which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate, is guilty of an offence.

(5) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the sending to the Registrar of the certificate he believed on reasonable grounds that this section had been complied with.

(6) A company that is not required to comply with section 154 by virtue of subsection (5) of that section, is not required to comply with this section.

dit mmittee.

**156.**—(1) Subject to subsection (2) a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates.

(2) A company may apply to the Registrar for an order authorising the company to dispense with an audit committee, and the Registrar may, if he is satisfied that the shareholders will not be prejudiced by such an order, permit the company to dispense with an audit committee on such reasonable conditions as he thinks fit.

(3) An audit committee shall review the financial statements of the company before such financial statements are approved under section 152.

(4) The auditor of a company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard thereat; and, if so requested by a member of the audit committee,

shall attend every meeting of the committee held during the term of office of the auditor.

(5) The auditor of a company or a member of the audit committee may call a meeting of the committee.

Purposes of sections 158 to 161.

**157.** The main purposes of sections 158 to 161 are to secure that only persons who are properly supervised and appropriately qualified are appointed auditors of companies, and that audits by persons so appointed are carried out properly and with integrity and with a proper degree of independence.

Eligibility for appointment.

**158.**—(1) A person is eligible for appointment as auditor of a company only if he

(*a*) is a practising member of a recognised supervisory body, and

(*b*) is eligible for the appointment under the rules of that body.

(2) An individual or a firm may be appointed as auditor of a company

(3) In this section "recognised supervisory body" means a prescribed professional institute or other body.

Effect of appointment of partnership.

**159.**—(1) The following provisions apply to the appointment as auditor of a company of a partnership constituted under the law of Grenada or under the law of any other country or territory in which a partnership is not a legal person.

(2) The appointment is, unless a contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment shall be treated as extending to

(*a*) any partnership which succeeds to the practice of that partnership and is eligible for the appointment, and

(*b*) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For this purpose a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under subsection (3), the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company.

ligibility ground lack of lependence.

**160.**—(1) A person is ineligible for appointment as auditor of a company if he is

(*a*) an officer or employee of the company, or

(*b*) a partner or employee of such a person, or a partnership of which such a person is a partner,

or if he is ineligible by virtue of paragraph (a) or (b) for appointment as auditor of any associated undertaking of the company.

(2) A person is also ineligible for appointment as auditor of a company if there exists between him and any associate of his and the company or any associated undertaking a connection of any such description as may be specified by regulations made under section 527.

(3) In this section "associated undertaking" in relation to a company means

(*a*) a parent undertaking or subsidiary undertaking of the company, or

(*b*) a subsidiary undertaking of any parent undertaking of the company.

Effect of ineligibility.

**161.**—(1) No person shall act as auditor of a company if he is ineligible for appointment to the office.

(2) If during his term of office an auditor of a company becomes ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of subsection (1) or fails to give notice of vacating his office as required by subsection (2) is guilty of an offence.

(4) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was or had become ineligible for appointment.

pointment auditor.

**162.**—(1) Subject to section 163, the shareholders of a company shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 65(1)(*e*) is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders, or if not so fixed, it may be fixed by the directors.

pensing auditor.

**163.**—(1) The shareholders of a company other than a company mentioned in subsection (1) of section 154 may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

sation office.

**164.**—(1) An auditor of a company ceases to hold office when

(*a*) he dies or resigns, or

(*b*) he is removed pursuant to section 165.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or

at the time specified in the resignation, whichever is the later date.

Removal of auditor.

**165.**—(1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 167.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 166.

Filling auditor vacancy.

**166.**—(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy; and if they fail to call a meeting, or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a company may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

Court appointed auditor.

**167.**—(1) If a company does not have an auditor, the court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 163 not to appoint an auditor.

**168.** The auditor of a company is entitled to receive notice of every meeting of the shareholders of the company, and, at the expense of the company, to attend and be heard at the meeting on matters relating to his duties as auditor.

**169.**—(1) If a shareholder of a company, whether or not he is entitled to vote at the meeting, or a director of a company gives written notice to the auditor of the company, not less than 10 days before a meeting of the shareholders of the company, to attend the meeting, the auditor shall attend the meeting at the expense of the company and answer questions relating to his duties as auditor or former auditor of the company.

(2) A shareholder or director who sends a notice referred to in subsection (1) shall, concurrently, send a copy of the notice to the company.

(3) Subsection (1) applies *mutatis mutandis* to any former auditor of the company.

**170.** (1) An auditor who

(*a*) resigns,

(*b*) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,

(*c*) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of

the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or

(*d*) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 163 is to be proposed,

may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 168 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required by section 142.

Examination by auditor.

**171.**—(1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in subparagraph (ii) of paragraph (*a*) of subsection (1) of section 149.

(2) Notwithstanding section 172, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

(3) For the purpose of subsection (2) reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding company reported upon by the auditor are in consolidated form.

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**172.**—(1) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor

(*a*) such information and explanations, and

(*b*) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 171 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of an auditor of a company, the directors of the company shall

(*a*) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 171, and

(*b*) furnish the information and explanations so obtained to the auditor.

Detected error.

**173.**—(1) A director or an officer of a company shall forthwith notify the audit committee and the auditor of any error or mis-statement of which he becomes aware in a financial statement that the auditor or a former auditor of the company has reported upon.

(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly.

(3) When under subsection (2) the auditor or a former auditor of a company informs the directors of an error or mis-statement in a financial statement of the company, the directors shall

(*a*) prepare and issue revised financial statements, or

(*b*) otherwise inform the shareholders of the error or mis-statement,

and, if the company is one that is required to comply with section 154, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

Privilege of auditor.

**174.** An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act.

## Division H: Corporate Records

Registered office.

**175.**—(1) A company shall at all times have a registered office in Grenada.

(2) The directors of the company may change the address of the registered office.

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**176.**—(1) At the time of sending articles of incorporation, the incorporators shall send to the Registrar, in the prescribed form, notice of the address of the registered office of the company and the Registrar shall file the notice.

(2) A company shall within 15 days of any change of the address of its registered office, send to the Registrar a notice in the prescribed form of the change, which the Registrar shall file.

ecords of ompany.

**177.**—(1) A company shall prepare and maintain at its registered office records containing

(*a*) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto;

(*b*) minutes of meetings and resolutions of shareholders; and

(*c*) copies of all notices required by section 69, 77 or 176.

(2) A company shall prepare and maintain a register of members showing

(*a*) the name and the latest known address of each person who is a member;

(*b*) a statement of the shares held by each member;

(c) the date on which each person was entered on the register as a member, and the date on which any person ceased to be a member.

(3) A company shall prepare and maintain a register of its directors and secretaries and a register of its directors' holdings in accordance with sections 178 to 180.

(4) A public company shall prepare and maintain a register of substantial shareholding in the company in accordance with sections 181 to 185.

(5) A company that issues debentures shall prepare and maintain a register of debenture holders showing

(a) the name and the latest known address of each debenture holder;

(b) the principal of the debentures held by each holder;

(c) the amount or the highest amount of any premium payable on redemption of the debentures;

(d) the issue price of the debentures and the amount paid up on the issue price;

(e) the date on which the name of each person was entered on the register as a debenture holder; and

(f) the date on which each person ceased to be debenture holder.

(6) A company that grants conversion privileges, options, or rights to acquire shares of the company shall

maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted, and such other particulars in respect thereof as are prescribed.

(7) A company may appoint an agent to prepare and maintain the registers required by this section to be prepared and maintained by the company; and the registers may be kept at the registered office of the company or at some other place in Grenada designated by the directors of the company.

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**178.**—(1) The register of directors and secretaries kept by a company pursuant to subsection (3) of section 177 shall contain with respect to each director

(*a*) a statement of his present forename and surname, any former forename or surname, his usual residential address and his business occupation (if any);

(*b*) particulars of other directorships held by him; and

(*c*) who is, or who is to perform the function of, a managing director, a statement to that effect.

(2) The register kept by a particular company need not contain, pursuant to subsection (1)(*b*), particulars of directorships held by a director in any company of which the particular company is a wholly owned subsidiary.

(3) The register shall contain with respect to the secretary and each assistant secretary

(*a*) in the case of an individual, a statement of his present forename and

surname, any former forename or surname, and his usual residential address;

(*b*) in the case of a corporation, a statement of its corporate name and registered or principal office; and

(*c*) in the case of a firm, a statement of the name and principal office of the firm.

(4) A company shall lodge with the Registrar

(*a*) within one month after a person ceases to be a director or, except in the case of a person becoming a director pursuant to section 69, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each person who is then a director of the company, the particulars required to be specified in the register in relation to him;

(*b*) within one month after a person becomes the secretary or an assistant secretary, a return in the prescribed form notifying the Registrar of that fact and containing with respect to the person, the particulars required to be specified in the register in relation to such a person; and

(*c*) within one month after a person ceases to be the secretary or an assistant secretary, a return in the prescribed

form notifying the Registrar of that fact.

(5) A director in respect of whom an entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(6) A director is guilty of an offence

(*a*) if he fails to comply with sub-section (5); or

(*b*) if he gives false, misleading or incomplete information to any company with a view to it making an entry in its register.

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**179.**—(1) A public company shall keep a register showing the required particulars with respect to any interest in shares in, or debentures of, the company or of any affiliate or associate of the company, which is vested in a director.

(2) For the purposes of this section, an interest in shares or debentures is vested in a director if

(*a*) the shares or debentures are registered in the director's name, or the names of the director and other persons jointly, or in the name of a nominee for him, or for him and them;

(*b*) the director has a derivative interest in the shares or debentures, or a right or

power to acquire a derivative interest in them;

(*c*) the director has a right to subscribe for the shares or debentures, or another person has a right to subscribe for them and the director has a right to acquire them after they have been allotted;

(*d*) the shares or debentures are the subject of a voting arrangement in favour of a director, that is to say, an arrangement (whether legally enforceable or not) by which the director may require the holder of the shares or debentures to vote, or not to vote, or to vote in a particular manner, at any general meeting of shareholders or at any meeting of a class of shareholders or debenture holders, or by which the debenture may require the holder of the shares or debentures to appoint the director or any other person to be his proxy with power to vote in respect of the shares or debentures at any such meeting.

(3) For the purposes of subsection (1), the required particulars with respect to an interest in shares or debentures vested in a director are

(*a*) the number and classes of the shares and the number, classes and the amount of the principal and premiums payable to the holder of the debentures;

(*b*) the nature of the interest and its duration (if it is limited in duration);

(*c*) the date of the acquisition of the interest and the consideration (if any) given by the director or any other person for the acquisition; and

(*d*) the date of the disposal of the interest by the director or the date of its cessation (whichever first occurs) and the consideration (if any) received by him or any other person for such disposal or cessation.

(4) A director in respect of whom any entry is required to be made in the register shall notify the company in writing within seven days after the matter occasioning the requirement of the entry occurs or arises, and shall include in the notification the particulars which the company is required to enter in the register in respect of that matter.

(5) This section extends to interest in shares and debentures vested in a director at the time when he becomes a director, and subsection (4) applies in that case with the substitution of a period of seven days after the director becomes a director for the period of seven days after the matter occasioning the requirement of an entry occurs or arises.

(6) The register shall be so made up that entries in it against the several names recorded in the register appear in chronological order.

(7) The entries which are required by this section to be made in the register shall not be removed from the register, notwithstanding the fact that the person in respect

of whom they are required to be made ceases to be a director, but it shall not be necessary to make an entry in the register in respect of a matter which occurs or arises after he ceases to be a director.

(8) This section does not apply to an interest of a director which is created by the articles of incorporation of a company if the interest is one which is conferred on all the shareholders of the company or on all the shareholders of the class concerned, on the same terms and conditions, as on the director, that is to say, strictly in proportion to the shares, or shares of that class, held by them respectively.

(9) A company and every director of a company who is in default is guilty of an offence

(*a*) if the company fails to make an entry required by this section to be made in the register within three days after written notification of the matter required to be registered is given to it or any of its directors (other than a person in respect of whom an entry is required to be made) acquires knowledge of the matter in relation to which an entry is required to be made (whichever is the earlier); or

(*b*) if the company makes a false, misleading or incomplete entry in relation to a matter which is required to be entered in the register.

(10) A director of a company is guilty of an offence if he fails to give a written notice of any matter in compliance with subsection (4) or (5), within the time thereby limited, to every company which is required to

make an entry in relation to the matter in the register, o if he gives false, misleading or incomplete information t any such company with a view to it making an entry in it register.

Extension of section to associates of directors.

180.—(1) For the purposes of section 179

(*a*) an interest of an associate of a director of a company (not being himself a director thereof) in shares or debentures shall be treated as being the director's interest; and

(*b*) a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an associate of a director of a company (not being himself a director thereof) shall be treated as having been entered into, exercised or made by, or as the case may be, as having been made to, the director.

(2) A director of a company shall be under obligation to notify the company in writing of the occurrence, while he is director, of either of the following events, namely

(*a*) the grant by the company to an associate of his of a right to subscribe for shares in, or debentures of, the company; and

(*b*) the exercise by an associate of his of such a right as aforesaid granted by the company,

stating, in the case of the grant of a right, the like information as is required by section 179 to be stated by the director on the grant to him by another company of a

right to subscribe for shares in, or debentures of, that other company and, in the case of the exercise of a right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another company to subscribe for shares in, or debentures of, that other company; and an obligation imposed by this subsection on a director shall be fulfilled by him before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.

(3) A person is guilty of an offence if he fails to give a written notice of any matter in compliance with subsection (2), within the time thereby limited, to the company concerned, or if he gives false, misleading or incomplete information to the company.

Substantial shareholder.

**181.**—(1) For the purposes of sections 182 to 185 a person has a substantial shareholding in a company if he holds, by himself or by his nominee, shares in the company which entitle him to exercise at least ten per centum of the unrestricted voting rights at any general meeting of shareholders.

(2) For the purposes of the said sections, a person who has a substantial shareholding in a company is a substantial shareholder of the company.

Substantial shareholder to give notice to company.

**182.**—(1) A person who is a substantial share-holder in a company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after that person becomes aware that he is a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

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**183.**—(1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give notice under subsection (1) shall do so within fourteen days after he becomes aware that he has ceased to be a substantial shareholder.

mpany to p register ubstantial reholders.

**184.**—(1) A company shall keep a register in which it shall enter

(*a*) in alphabetical order the names of persons from whom it has received a notice under section 182; and

(*b*) against each name so entered, the information given in the notice and, where it receives a notice under section 183, the information given in that notice.

(2) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within fourteen days after the day on which the requirement is received by the company.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence.

(4) A company is not, by reason of anything done under sections 182 to 184

(*a*) to be taken for any purpose to have notice of; or

(*b*) put upon inquiry as to,

a right of a person to or in relation to a share in the company.

Offence.

**185.** A person who fails to comply with section 182 or 183 is guilty of an offence.

Trust notices.

**186.**—(1) Except as provided in this section, notice of a trust, express, implied or constructive, shall not be

(*a*) entered by a company in any of the registers maintained by it pursuant to section 177, or

(*b*) be received by the Registrar.

(2) No liabilities are affected by anything done in pursuance of subsection (3), (4) or (5); and the company concerned is not affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a member or debenture holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered member or debenture holder, become the

registered member or debenture holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered pursuant to subsection (3) as a holder of a share or debenture of a company, the personal representative is, in respect of that share or debenture, subject to the same liabilities, and no more, that he would be subject to have the share or debenture remained registered in the name of the deceased individual.

ier ords.

**187.**—(1) In addition to the records described in section 177, a company shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in Grenada designated by the directors; and those records shall at all reasonable times be available for inspection by the directors and shareholders.

(3) When any accounting records of a company are kept at a place outside Grenada accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis shall be kept by the company at the registered office of the company or at some other place in Grenada designated by the directors.

(4) For the purposes of paragraph (*b*) of subsection (1) of section 177 and of this section, when a former-Act company is continued under this Act, "records" includes similar registers and other records required by law

to be maintained by the company before it was continued under this Act.

Records form.

**188.** All records required by this Act to be prepared and maintained

(*a*) may be in a bound or loose-leaf form or in a photographic film form; or

(*b*) may be entered or recorded

(i) by any system of mechanical or electronic data processing, or

(ii) by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

Duty of care for records.

**189.** A company and its agents shall take reasonable precautions

(*a*) to prevent loss or destruction of,

(*b*) to prevent falsification of entries in, and

(*c*) to facilitate detection and correction of inaccuracies in,

the records required by this Act to be prepared and maintained in respect of the company.

Access to records.

**190.**—(1) The directors and shareholders of a company, and their agents and legal representatives, may, during the usual business hours of the company, examine the records of the company referred to in section 177 and may take extracts therefrom free of charge.

(2) A shareholder of a company is, upon request and without charge, entitled to one copy of the articles and by-laws of the company and any unanimous shareholder agreement, and to one copy of any amendments to any of those documents.

asic list f shareholders.

**191.**—(1) Upon payment of a reasonable fee and sending to a public company or its transfer agent the affidavit referred to in subsection (4), any person may upon application require the company or its transfer agent to furnish him, within 15 days from the receipt of the affidavit, a list of members of the company, in this section referred to as the "basic list", made up to a date not more that 30 days before the date of receipt of the affidavit, which shall set out

(*a*) the names of the members of the company,

(*b*) the number of shares held by each member, and

(*c*) the address of each member as shown on the records of the company.

(2) When a person requiring a basic list from a public company states in the affidavit referred to in subsection (4) that he requires supplemental lists from the company, he may, upon payment of a reasonable fee, require the company or its transfer agent to furnish him with supplemental lists of the members, which shall set out any changes from the basis list

(*a*) in the names or addresses of the members, and

(*b*) in the number of shares held by each member

for each business day following the date to which the basic list is made up.

(3) When a supplemental list has been required from a public company under subsection (2) by any person, the company, or its transfer agent, shall furnish that person with a supplemental list

(*a*) on the date the basic list is furnished, if the information relates to changes that took place before that date, and

(*b*) on the business day following the day to which the supplemental list relates if the information relates to changes that take place on or after the date the basic list is furnished.

(4) The affidavit required under subsection (1) shall state

(*a*) the name and address of the applicant;

(*b*) the name and address for service of the body corporate, if the applicant is a body corporate; and

(*c*) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 193.

(5) If the applicant is a body corporate, the affidavit shall be made by a director or officer of the body corporate.

Options list.

**192.** A person requiring under section 191 that a company supply a basic list or a supplemental list may also

require the company to include in any such list the name and address of any known holder of an option or right to acquire shares of the company.

istricted e of lists.

**193.** A list of members obtained under section 191 from a company shall not be used by any person except in connection with

(*a*) an effort to influence the voting of shareholders of the company;

(*b*) an offer to acquire shares in the company;

(*c*) any other matter relating to the affairs of the company.

nual urns.

**194.**—(1) A company shall, not later than the first day of April in each year after its incorporation or continuance under this Act, send to the Registrar a return in the prescribed form containing the prescribed information made up to the preceding thirty-first day of December and accompanied with the prescribed fees.

(2) A director or officer of the company shall certify the contents of every return made under this section.

(3) If default is made in complying with this section, the company and every director and officer who is in default is guilty of an offence.

### Division I: Transfer of Shares and Debentures

ansferring shares.

**195.**—(1) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee.

(2) Where an instrument of transfer is prescribed in the by-laws of a company, that instrument shall be used to transfer the shares or debentures of the company.

(3) Subject to subsection (2) and to any enactment, no particular form of words are necessary to transfer shares or debentures, if words are used that show with reasonable certainty that the person signing the transfer intends to vest the title to the shares or debentures in the transferee.

(4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to the transferee

(*a*) on the delivery to him of the instrument of transfer signed by the transferor and of the transferor's share certificate or debenture, as the case may be, or

(*b*) on the delivery to him of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of the Stock Exchange of Grenada, or a regional Stock Exchange of the Organization of Eastern Caribbean States or of CARICOM if Grenada belongs to such regional Stock Exchange.

(5) If the transferor concerned is not registered with the company in respect of the shares, or, as the case may be, the debentures, subsection (4) has effect as if references to the transfer signed by the transferor included a reference to transfers signed by the person so registered and all holders of the shares or debentures intermediate between the person so registered and the transferor.

(6) Notwithstanding subsection (4) or (5), a company, and, in the case of debentures, the trustee of the covering trust deed, is not bound or entitled to treat the transferee of shares or debentures as the owner of them until the transfer to him has been registered or until the court orders the registration of the transfer to him; and until the transfer is presented to the company for registration, the company is not to be treated as having notice of the transferee's interest thereunder or of the fact that the transfer has been made.

(7) This section applies notwithstanding anything contained in the articles or by-laws of a company, and notwithstanding anything contained in any trust deed or debentures or any contract or instrument.

rictions ransfers.

**196.**—(1) No restriction or condition in a trust deed covering a debenture of a company, or in the debenture, limits the right of any person to transfer the debenture held by him.

(2) A transfer of the shares or debentures of a shareholder or debenture holder of a company made by

(*a*) his personal representative,

(*b*) a trustee in bankruptcy,

(*c*) a receiver appointed by or for the benefit of debenture holders,

(*d*) a receiver or other person appointed by the court to administer the estate of a person of unsound mind,

(*e*) the guardian of a minor, or

(f) a person appointed by the court to execute the transfer,

is, although the person executing the transfer is not himself registered with the company as the holder of the shares or debentures, as the case may be, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(3) This section applies in respect of a company notwithstanding anything contained in the articles or by-laws of the company, and notwithstanding anything contained in any trust deed or debentures, or any contract or instrument relating to the shares or debentures of the company.

Duty to issue.

**197.**—(1) A company shall issue a certification of the transfer of a share or debenture on the presentation to the company of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the company of the share or debenture.

(2) A certification consists of a statement signed on behalf of the company and written or endorsed on the transfer to the effect that the share certificate or debenture, as the case may be, has been delivered to, or lodged with, the company.

(3) The certification by a company of any transfer of a share or debenture of the company is a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the share or debenture in the transferor named in the transfer; but is not a representation that the transferor has any title to the share or debenture.

(4) Where any person acts on the faith of a false certification by a company made fraudulently or negligently, the company is liable to compensate him for any loss he incurs in consequence of his so acting.

(5) A company that has issued a certification of a transfer of a share or debenture of the company is liable to compensate any person for loss that he incurs in consequence of the company subsequently releasing, otherwise than on surrender of the certification of the transfer of the share or debenture, possession of the share certificate or debenture in respect of which the certification was issued.

(6) For the purposes of this section,

(*a*) the certification of a transfer is deemed to be made by a company if

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the company's behalf, and

(ii) the certification is signed by a person authorised to issue certifications of transfers on the company's behalf, or by any other officer or employee, either of the company or of a body corporate so authorised; and

(*b*) a certification is deemed to be signed by a person if it purports to be authenticated by his signature or initials, whether handwritten or not, unless the signature or initials were placed on the certification neither by that person nor any person authorised to use the signature or initials

for the purpose of issuing certifications of transfers on the company's behalf.

Transfer certificate.

**198.**—(1) A company shall, within 5 weeks after the allotment of any of its shares or debentures, and within 2 months after the date on which a transfer of any of its shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for any share or debenture allotted or transferred to him.

(2) When a company on which a notice is served requiring the company to make good any default in complying with subsection (1) fails to make good the default within 7 days after the service of the notice, the court may, on the application of the person entitled to have a certificate or debenture delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and the order may provide that all costs incidental to the application be borne by the company and any officer of the company responsible for the default.

(3) For the purposes of this section "transfer" means a transfer in proper form duly signed by the transferor and otherwise valid, and does not include a transfer that the company is for any reason entitled to refuse to register and does not register.

Registration.

**199.**—(1) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor has been delivered to the company; but nothing in this section affects any duty of the company to register as a member or debenture holder of the company any person to

whom the ownership of any share or debenture of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture of a company, the company shall enter in its register of members or debenture holders, as the case requires, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry had been made by the transferee.

(3) Notwithstanding anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company shall register the trustee in bankruptcy or the personal representative of a shareholder or debenture holder as a member in respect of the shares, or as holder of the debentures of the bankrupt or as the case may be, the deceased person, in its register of members or debenture holders, as the case may be, within 7 days after he produces to the company satisfactory evidence of his title and requests it to register him as a member or debenture holder.

fect of tificate.

**200.**—(1) A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company are held by any person is prima facie proof of the title of that person to the shares or debentures.

(2) The registration of a person as a member or debenture holder of a company, or the issue of a share certificate or debenture, constitutes a representation by the company that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned therein, is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture; and the company may not deny the truth of that representation as against a person who believes it to be true and contracts to acquire the shares or

debentures or any interest therein in good faith and for money or money's worth.

(3) It is no defence for a company to show for the purposes of subsection (2) that a registration or the issue of a share certificate or other document was procured by fraud or by the presentation to it of a forged document.

(4) Subsections (2) and (3) do not apply in respect of certificates issued by a former-Act company before the commencement date.

### Division J: Takeover Bids

**201.** In this Division, Definitions.

(*a*) "dissenting offeree", if a take-over bid is made for all the shares of a class of shares,

(i) means a shareholder of that class of share who does not accept the take-over bid, and

(ii) includes a subsequent holder of that share who acquires it from the person mentioned in sub-paragraph (i);

(*b*) "offer" includes an invitation to make an offer;

(*c*) "offeree" means a person to whom a take-over bid is made;

(*d*) "offeree company" means a company whose shares are the object of a take-over bid;

(*e*) "offeror" means a person who makes a take-over bid otherwise than as an agent, and includes 2 or more persons who, directly or indirectly,

(i) make take-over bids jointly or in concert; or

(ii) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

(*f*) "share" means a share with or without voting rights, and includes

(i) a debenture currently convertible into such a share,

(ii) currently exercisable options and rights to acquire a share or such a convertible debenture;

(*g*) "take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of any class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

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**202.** If, within 120 days after the date of a take-over bid, the bid is accepted by the holders of not less than 90 percent of the shares of any class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror may, upon complying with this Division, acquire the shares held by the dissenting offerees.

Notice to dissenting shareholders.

**203.** An offeror may acquire shares held by a dissenting offeree by sending, by registered post, within 60 days after the date of termination of the take-over bid, and in any event within 180 days after the date of the take-over bid an offeror's notice to each dissenting offeree and to the Registrar stating

(*a*) that offerees who are holding 90 percent or more of the shares to which the bid relates accepted the take-over bid;

(*b*) that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;

(*c*) that a dissenting offeree is required to elect

(i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid; or

(ii) to demand payment of the fair value of his shares in accordance with sections 209 to 212 by notifying the offeror within 20 days after the dissenting offeree receives the offeror's notice;

(*d*) that a dissenting offeree who does not notify the offeror in accordance with subparagraph (ii) of paragraph (c) is presumed to have elected to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bids; and

(*e*) that a dissenting offeree shall send those shares of his to which the take-over bid relates to the offeree-company within 20 days after he receives the offeror's notice.

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**204.** Concurrently with sending the offeror's notice under section 203, the offeror shall send to the offeree-company a notice of adverse claim with respect to each share held by a dissenting offeree.

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**205.** A dissenting offeree to whom an offeror's notice is sent under section 203 shall, within 20 days after he receives that notice, send the share certificate of his for the class of shares to which the take-over bid relates to the offeree-company.

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**206.** Within 20 days after the offeror sends an offeror's notice under section 203, the offeror shall pay or transfer to the offeree-company the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under subparagraph (i) of paragraph (c) of section 203, to accept the take-over bid.

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**207.** The offeree-company holds in trust for the dissenting shareholders the money or other consideration it receives under section 206; and the offeree-company shall deposit the money in a separate account in a bank and shall place the other consideration in the custody of a bank.

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**208.** Within 30 days after the offeror sends an offeror's notice under section 203, the offeree-company shall

(*a*) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;

(*b*) give to each dissenting offeree who,

(i) under subparagraph (i) of paragraph (c) of section 203, elects to accept the take-over bid, and

(ii) sends his share certificates as required under section 205,

the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money; and

(*c*) send to each dissenting shareholder who has not sent his share certificates as required under section 205 a notice stating that

(i) his shares have been cancelled;

(ii) the offeree-company or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares; and

(iii) the offeree-company will, subject to sections 209 to 211, send that money or other consideration to him forthwith after receiving his shares.

Application to court.

**209.**—(1) If a dissenting offeree has, under subparagraph (ii) of paragraph (c) of section 203, elected to demand payment of the fair value of his shares, the offeror may, within 20 days after it has paid the money or transferred the other consideration under section 206, apply to the court to fix the fair value of the shares of that dissenting offeree.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of 20 days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided therefor in that subsection, a dissenting offeree thereby elects to transfer his shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

parties.

**210.** Upon an application under section 209,

(*a*) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 203 whose shares have not been acquired by the offeror are to be joined as parties and are bound by the decision of the court; and

(*b*) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or by an attorney-at-law.

's and of court.

**211.**—(1) Upon an application to the court under section 209, the court may determine whether any other person is a dissenting offeree who should be joined as a party; and the court shall then fix a fair value for the shares of all dissenting offerees.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court shall be made in favour of each dissenting offeree against the offeror and be for the amount of the offeree's shares as fixed by the court.

Additional orders.

**212.** In connection with proceedings under this Division, the court may make any order it thinks fit, and, in particular, it may

(*a*) fix the amount of money or other consideration that is required to be held in trust under section 207;

(*b*) order that the money or other consideration be held in trust by a person other than the offeree-company;

(*c*) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 205 until the date of payment, a reasonable rate of interest on the amount payable to him; or

(*d*) order that any money payable to a shareholder who cannot be found be paid into court and subsection (2) of section 479 applies in respect of that payment.

## Division K: Fundamental Company Changes

**213.**—(1) Subject to sections 215 and 216, the articles of a company may, by special resolution, be amended:

(*a*) to change its name;

(*b*) to add, change or remove any restriction upon the business that the company can carry on;

(c) to change any maximum number of shares that the company is authorised to issue;

(d) to create new classes of shares;

(e) to change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;

(f) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series, or into the same or a different number of shares of other classes or series;

(g) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(h) to authorise the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(i) to authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(j) to revoke, diminish or enlarge any authority conferred under paragraphs (h) to (i);

(*k*) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 71 and 76;

(*l*) to add, change or remove restrictions on the transfer of shares; or

(*m*) to add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon, without further approval of the shareholders.

(3) A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business and affairs of the company may not be amended except with the consent of all the shareholders.

Proposal to amend articles.

**214.**—(1) Subject to subsection (2), a director or a shareholder of a company who is entitled to vote at an annual meeting of shareholders may, in accordance with section 114, make a proposal to amend the articles of the company.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment, and, where applicable, shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 226; but failure to make that statement does not invalidate an amendment.

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posal.

**215.** (1) The holders of shares of a class, or, subject to subsection (2), of a series, are, unless the articles otherwise provide in the case of an amendment described in paragraph (a) or (b), entitled to vote separately, as a class or series, upon a proposal to amend the articles

(*a*) to increase or decrease any maximum number of authorised shares of that class, or increase any maximum number of authorised shares of a class having rights or privileges equal or superior to the shares of that class;

(*b*) to effect an exchange, reclassification or cancellation of all or part of the shares of that class;

(*c*) to add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, in particular,

(i) to remove or change prejudicially rights to accrued dividends or to cumulative dividends,

(ii) to add, remove or change redemption rights prejudicially,

(iii) to reduce or remove a dividend preference or a winding-up preference, or

(iv) to add, remove or change prejudicially conversion privileges, options, voting transfer or pre-emptive rights, or rights to acquire shares or debentures of a company, or sinking fund provisions;

(*d*) to increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;

(*e*) to create a new class of shares equal or superior to the shares of that class;

(*f*) to make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class;

(*g*) to effect an exchange or to create a right of exchange of all or part of the shares of another class into the shares of that class; or

(*h*) to constrain the issue or transfer of the shares of that class, or extend or remove the constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved the amendment by a special resolution.

Delivery of articles.

**216.**—(1) Subject to any revocation under subsection (2) of section 213, after an amendment has been adopted under section 213 or 215, articles of amendment in the prescribed form shall be sent to the Registrar.

(2) If an amendment effects or requires a reduction of stated capital, subsections (3) and (4) of section 44 apply.

cate endment.

**217.**—(1) Upon receipt of articles of amendment from a company, the Registrar shall issue to the company a certificate of amendment in accordance with section 503.

(2) An amendment to the articles of a company becomes effective on the date shown in the certificate issued by the Registrar in respect of that company; and the articles of the company are amended accordingly.

(3) No amendment to the articles affects

(*a*) an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers, or

(*b*) any civil, criminal or administrative action or proceeding to which a company or any of its directors or officers is a party.

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**218.**—(1) The directors of a company may at any time, and shall, when reasonably so directed by the Registrar, restate the articles of incorporation of the company as amended.

(2) Re-stated articles of incorporation in the prescribed form shall be sent to the Registrar.

(3) Upon receipt of re-stated articles of incorporation, the Registrar shall issue a re-stated certificate of incorporation in accordance with section 503.

(4) Re-stated articles of incorporation are effective on the date shown in the re-stated certificate of incorporation, and supersede the original articles of incorporation and all amendments thereto.

Amalgamation.

**219.** Two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

Agreement for amalgamation.

**220.**—(1) Each company proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, and in particular, setting out

(*a*) the provisions that are required to be included in articles of incorporation under section 5;

(*b*) the name and address of each proposed director of the amalgamated company;

(*c*) the manner in which the shares of each amalgamating company are to be converted into shares or debentures of the amalgamated company;

(*d*) if any shares of an amalgamating company are not to be converted into shares or debentures of the amalgamated company, the amount of money or shares or debentures of any body corporate that the holders of those shares are to receive instead of shares or debentures of the amalgamated company;

(*e*) the manner of payment of money instead of the issue of fractional shares of the amalgamated company or of any other body corporate the shares or debentures of which are to be received in the amalgamation;

(*f*) whether the by-laws of the amalgamated company are to be those of one of the amalgamating companies, and, if not, a copy of the proposed by-laws, and

(*g*) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective, without any repayment of capital in respect thereof; and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated company.

oval by holders.

**221.**—(1) The directors of each amalgamating company shall submit the amalgamation agreement for approval to a meeting of the shareholders of the amalgamating company of which they are directors, and, subject to subsection (4), to the holders of each class or series of shares of that amalgamating company.

(2) A notice of a meeting of shareholders complying with section 111 shall be sent in accordance with that section to each shareholder of each amalgamating company; and the notice

(*a*) shall include or be accompanied with a copy or summary of the amalgamation agreement; and

(*b*) shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 226;

but failure to make the statement referred to in paragraph (*b*) does not invalidate an amalgamation.

(3) Each share of an amalgamating company carries the right to vote in respect of an amalgamation, whether or not the share otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 215.

(5) An amalgamation agreement is adopted when the shareholders of each amalgamating company have approved of the amalgamation by special resolution of each class or series of the shareholders entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement can be terminated by the directors of an amalgamating company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating companies.

Vertical short-form amalgamation.

**222.** A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company without complying with sections 220 and 221, if

(*a*) the amalgamation is approved by a resolution of the directors of each amalgamating company; and

(*b*) the resolutions provide that

(i) the shares of each amalgamating subsidiary company will be cancelled without any repayment of capital in respect of the cancellation;

(ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding company; and

(iii) no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

ontal form amation.

**223.** Two or more wholly-owned subsidiary companies of the same holding body corporate may amalgamate and continue as one company without complying with sections 220 and 221 if

(*a*) the amalgamation is approved by a resolution of the directors of each amalgamating company; and

(*b*) the resolutions provide that

(i) the shares of all but one of the amalgamating subsidiary companies will be cancelled without any repayment of capital in respect of the cancellation;

(ii) the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary company whose shares are not cancelled; and

(iii) the stated capital of the amalgamating subsidiary companies whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

Articles of amalgamation.

**224.**—(1) Subject to subsection (6) of section 221, after an amalgamation has been adopted under section 221 or approved under section 222 or 223, articles of amalgamation in the prescribed form shall be sent to the Registrar together with the documents required by sections 69 and 176.

(2) There shall be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating company that establishes to the satisfaction of the Registrar

(*a*) that there are reasonable grounds for believing that

(i) each amalgamating company is and the amalgamated company will be able to pay its liabilities as they become due; and

(ii) the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

(*b*) that there are reasonable grounds for believing that

(i) no creditor will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given to creditors by a company, if

(*a*) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1000;

(*b*) a notice is published once in a newspaper published or distributed in Grenada; and

(*c*) each notice states that the company intends to amalgamate with one or more specified companies in accordance with this Act, and that a creditor of the company can object to the amalgamation within 30 days from the date of the notice.

ificate of lgamation.

**225.**—(1) Upon receipt of articles of amalgamation, the Registrar shall issue a certificate of amalgamation in accordance with section 503.

(2) On the date shown in a certificate of amalgamation, in respect of an amalgamated company,

(*a*) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;

(*b*) the property of each amalgamating company becomes the property of the amalgamated company and is vested in that company without further assurance;

(*c*) the amalgamated company becomes liable for the obligations of each amalgamating company;

(*d*) any existing cause of action, claim or liability to prosecution is unaffected;

(*e*) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;

(*f*) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and

(*g*) the articles of amalgamation are the articles of incorporation of the amalgamated company, and, except for the purposes of subsection (1) of section 65, the certificate of amalgamation is the certificate of incorporation of the amalgamated company.

Dissent by shareholder.

**226.**—(1) Subject to sections 236 and 241, a shareholder of any class of shares of a company may dissent if the company resolves

(*a*) to amend its articles under section 213 to add, change or remove any provisions restricting the issue or transfer of shares of that class;

(*b*) to amend its articles under section 213 to add, change or remove any restriction upon the businesses that the company can carry on;

(*c*) to amalgamate with another company, otherwise than under section 222 or 223; or

(*d*) to sell, lease or exchange all or substantially all its property under section 136.

(2) Subject to sections 236 and 241, a shareholder of any class of shares of a company may dissent if the company is subject to an order of the court under section 237 permitting the shareholders to dissent.

(3) The articles of a company that is not a public company may provide that a shareholder of any class or series of shares who is entitled to vote under section 215 may dissent if the company resolves to amend its articles in a manner described in that section.

(4) In addition to any other right he has, but subject to section 235, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents or an order made under section 237 becomes effective, to be paid by the company the fair value of the shares held by him in respect of which he dissents; and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder may not claim under this section except only with respect to all the shares of a class or series

(*a*) held by him on behalf of any one beneficial owner, and

(*b*) registered in the name of the dissenting shareholder.

(6) A dissenting shareholder shall send to the company, at or before any meeting of shareholders of the company at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting and of his right to dissent.

(7) When a shareholder of a company has dissented pursuant to subsection (6) to a resolution referred to in subsection (1) or (3), the company shall, within 10 days after the shareholders of the company adopt the resolution, send to the shareholder notice that the resolution has been adopted; but the notice need not be sent to the shareholder if he has voted for the resolution or has withdrawn his dissent.

Demand for payment.

**227.**—(1) A dissenting shareholder shall within 20 days after he receives a notice under subsection (7) of section 226, or, if he does not receive that notice, within 20 days after he learns that a resolution under that subsection has been adopted, send to the company a written notice containing

(*a*) his name and address;

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

(*c*) a demand for payment of the fair value of the shares.

(2) A dissenting shareholder shall within 30 days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the company or its transfer agent.

(3) A dissenting shareholder who fails to comply with subsection (2) has no right to make a claim under this section.

(4) A company or its transfer agent shall endorse on any share certificate received by it under subsection (2) a notice that the holder of the share is a dissenting shareholder under this section, and forthwith return the share certificate to the dissenting shareholder.

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**228.** After sending a notice under section 227, a dissenting shareholder ceases to have any rights as a shareholder, other than the right to be paid the fair value of his shares as determined under this section, unless

(*a*) the dissenting shareholder withdraws his notice before the company makes an offer under section 229;

(*b*) the company fails to make an offer in accordance with section 229 and the dissenting shareholder withdraws his notice; or

(*c*) the directors,

(i) under subsection (2) of section 213 revoke a resolution to amend the articles of the company;

(ii) under subsection (6) of section 221, terminate an amalgamation agreement; or

(iii) under subsection (7) of section 136, abandon a sale, lease or exchange of property,

in which case his rights as a shareholder are re-instated as of the date the notice mentioned in section 227 was sent.

Offer to pay for share.

**229.**—(1) A company shall, not later than 7 days after the day on which the action approved by the resolution is effective, or the day the company received the notice referred to in section 227, whichever is the later date, send to each dissenting shareholder who has sent such a notice

(*a*) a written offer to pay for his shares in an amount considered by the directors of the company to be the fair value of those shares, which shall be accompanied with a statement showing how the fair value was determined; or

(*b*) if section 235 applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) Every offer made under subsection (1) for shares of the same class or series shall be on the same terms.

(3) Subject to section 235, a company shall pay for the shares of a dissenting shareholder within 10 days after an offer made under subsection (1) had been accepted; but the offer lapses if the company does not receive an acceptance of the offer within 30 days after it has been made.

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**230.**—(1) If a company fails to make an offer under subsection (1) of section 229, or if a dissenting shareholder fails to accept the offer made by the company, the company may, within 50 days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of any dissenting shareholders.

(2) If a company fails to apply to the court in the circumstances described in subsection (1), a dissenting shareholder may, within a further period of 20 days, apply to the court to fix a fair value for the shares of any dissenting shareholders.

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**231.** Upon an application to the court under section 230,

(*a*) all dissenting shareholders whose shares have not been purchased by the company are to be joined as parties and are bound by the decision of the court; and

(*b*) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his right to appear and be heard in person or by an attorney-at-law.

powers.

**232.**—(1) Upon an application to the court under section 230, the court may determine whether any other person is a dissenting shareholder who should be joined as a party; and the court shall then fix a fair value for the shares of the dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court shall be made gainst the company in favour of each dissenting hareholder of the company and for the amount of the hares of the dissenting shareholder as fixed by the court.

Interest.

233. The court may allow a reasonable rate of interest n the amount payable to each dissenting shareholder, from he date the action approved by the resolution is effective ntil the date of payment by the company

Recourse of dissenting shareholder.

234.—(1) If section 235 applies, the company shall vithin ten days after the making of an order under ubsection (3) of section 232, notify each dissenting hareholder that it is unable lawfully to pay dissenting hareholders for their shares.

(2) If section 235 applies, a dissenting shareholder, y written notice delivered to the company within thirty lays after receiving a notice under subsection (1),

(*a*) may withdraw his notice of dissent, in which case the company consents to the withdrawal and the shareholder is re-instated to his full rights as a shareholder; or

(*b*) may retain a status as a claimant against the company entitled to be paid as soon as the company is lawfully able to do so, or, in a winding-up, to be ranked subordinate to the rights of creditors of the company, but in priority to the company's shareholders.

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**235.** A company shall not make a payment to a dissenting shareholder under section 229 if there are reasonable grounds for believing

(*a*) the company is or would, after the payment, be unable to pay its liabilities as they become due; or

(*b*) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

anisation.

**236.**—(1) In this section, "re-organisation" means

(*a*) a court order made under section 241;

(*b*) a court order approving a proposal under the Bankruptcy Ordinance or

(*c*) a court order that is made under any other enactment and that affects the rights among the company, its shareholders and creditors.

(2) If a company is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 213.

(3) If the court makes an order referred to in subsection (1), the court may also

(*a*) authorise the issue of debentures of the company, whether or not convertible into shares of any class or series, or having attached any rights or options to acquire shares of any class or series, and fix the terms thereof; and

(*b*) appoint directors in place of, or in addition to, all or any of the directors then in office.

(4) After an order referred to in subsection (1) has been made, articles of re-organisation in the prescribed form shall be sent by the company to the Registrar, together with the documents required by sections 69 and 176, if applicable.

(5) Upon receipt of articles of re-organisation for a company, the Registrar shall issue a certificate of amendment in accordance with section 503.

(6) A re-organisation of a company becomes effective on the date shown in the certificate of amendment, and its articles of incorporation are amended accordingly.

(7) A shareholder of a company is not entitled to dissent under section 226 if an amendment to the articles of incorporation of the company is effected under this section.

Arrangements.

**237.**—(1) In this section, "arrangements" includes

(*a*) an amendment of the articles of a company;

(*b*) an amalgamation of two or more companies;

(*c*) a division of the businesses carried on by a company;

(*d*) a transfer of all or substantially all the property of a company to another body corporate in exchange for property, money or shares or debentures of the body corporate;

(*e*) an exchange of shares or debentures held by shareholders or debenture holders of a company for property, money or other shares or debentures of the company, or property, money or shares or debentures of another body corporate if it is not a take-over bid within the meaning of Division J;

(*f*) a winding up and dissolution of a company; and

(*g*) any combination of the activities described in paragraphs (a) to (f).

(2) For the purposes of this section, a company is insolvent when

(*a*) it is unable to pay its liabilities as they become due, or

(*b*) the realisable value of the assets of the company are less than the aggregate of its liabilities and stated capital of all classes.

(3) Where it is not practicable for a company that is solvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the company may apply to the court for an approval of an arrangement proposed by the company.

(4) In connection with an application under this section, the court may make any interim or final order it thinks fit,

(*a*) an order determining the notice to be given to any interested person or

dispensing with notice to any person other than the Registrar;

(*b*) an order requiring a company, in such manner as the court directs, to call, hold and conduct a meeting of shareholders or debenture holders, or holders of options or rights to acquire shares in the company;

(*c*) an order permitting a shareholder to dissent under section 226; or

(*d*) an order approving an arrangement as proposed by the company or as amended in such manner as the court may direct.

(5) An applicant under this section shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(6) After an order referred to in paragraph (d) of subsection (4) has been made, articles of arrangement in the prescribed form shall be sent to the Registrar together with the documents required by sections 77 and 176, if applicable.

(7) Upon receipt of articles of arrangement, the Registrar shall issue a certificate of amendment in accordance with section 503.

(8) An arrangement becomes effective on the date shown in the certificate of amendment.

finitions. **238.** In this Part,

(*a*) "action" means an action under this Act;

(*b*) "complainant" means

(i) a shareholder or debenture holder, or a former holder of a share or debenture of a company or any of its affiliates;

(ii) a director or an officer or former director or officer of a company or any of its affiliates;

(iii) the Registrar; or

(iv) any other person who, in the discreti on of the court, is a proper person to make an application under this Part.

rivative tions. **239.**—(1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which such company or any of its subsidiaries is a party.

(2) No action may be brought, and no intervention in an action may be made, under subsection (1) unless the court is satisfied

(*a*) that the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the

company or its subsidiary do not bring, diligently prosecute or defend, or discontinue, the action;

(*b*) that the complainant is acting in good faith; and

(*c*) that it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Court powers.

**240.** In connection with an action brought or intervened in under section 239, the court may at any time make any order it thinks fit, including,

(*a*) an order authorising the complainant, the Registrar or any other person to control the conduct of the action;

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

(*c*) an order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present shareholders or debenture holders of the company or its subsidiary, instead of to the company or its subsidiary; or

(*d*) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Oppression restrained.

**241.**—(1) A complainant may apply to the court for an order under this section.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates,

(*a*) any act or omission of the company or any of its affiliates effects a result,

(*b*) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner, or

(*c*) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including,

(*a*) an order restraining the conduct complained of;

(*b*) an order appointing a receiver or receiver-manager;

(*c*) an order to regulate a company's affairs by amending its articles or by-laws, or creating or amending a unanimous shareholder agreement;

(*d*) an order directing an issue or exchange of shares or debentures;

(*e*) an order appointing directors in place of, or in addition to, all or any of the directors then in office;

(*f*) an order directing a company, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;

(*g*) an order directing a company, subject to subsection (6), or any other person, to pay to a shareholder or debenture holder any part of the moneys paid by him for his shares of debentures;

(*h*) an order varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;

(*i*) an order requiring a company, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 149 or an accounting in such other form as the court may determine;

(*j*) on order compensating an aggrieved person;

(*k*) an order directing rectification of the registers or other records of a company under section 244;

(*l*) an order winding up and dissolving the company;

(*m*) an order directing an investigation under Division B of Part V to be made; or

(*n*) an order requiring the trial of any issue.

(4) If an order made under this section directs the amendment of the articles or by-laws of a company,

(*a*) the directors shall forthwith comply with subsection (4) of section 236; and

(*b*) no other amendment to the articles or by-laws may be made without the consent of the court, until the court otherwise orders.

(5) A shareholder is not entitled under section 226 to dissent in an amendment to the articles is effected under

(6) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that

(*a*) the company is unable or would, after the payment, be unable to pay its liabilities as they become due, or

(*b*) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

(7) An applicant under this section may apply in the alternative for an order under section 377.

Staying action.

**242.**—(1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary; but evidence of approval by the shareholders may be taken into account by the court in making an order under section 240, 241 or 377.

(2 An application made or an action brought or intervened in under this Part may not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and if the court determines that the interests of any complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

Interim costs.

**243.** In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements; but the complainant may be held accountable for those interim costs upon the final disposition of the application or action.

Rectification of records.

**244.**—(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture holder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.

(2) An applicant under this section shall give the Registrar notice of the application; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(3) In connection with an application under this section, the court may make any order it thinks fit including,

(*a*) an order requiring the registers or other records of the company to be rectified;

(*b*) an order restraining the company from calling or holding a meeting of shareholders, or paying a dividend before that rectification;

(*c*) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between 2 or more shareholders or debenture holders or alleged shareholders or alleged debenture holders, or between the company and any shareholders or debenture holders, or alleged shareholders or alleged debenture holders; and

(*d*) an order compensating a party who has incurred a loss.

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**245.** The Registrar may apply to the court for directions in respect of any matter concerning his duties under this

Act; and on the application the court may give such directions and make such further order as it thinks fit.

Refusal by Registrar.

**246.**—(1) When the Registrar refuses to file any articles or other document required by this Act to be filed by him before the articles or other document become effective, the Registrar shall

(*a*) within 60 days after the receipt thereof by him, or 60 days after he receives any approval required under any other Act, whichever is the later date, and,

(*b*) after giving the person who sent the articles or document an opportunity to be heard,

give written notice of the refusal to that person, together with the reasons for the refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles or document within the time limited therefor in subsection (1), then, for the purposes of section 247, the Registrar has refused to file the articles or document.

Appeal from Registrar.

**247.** A person who feels aggrieved by the decision of the Registrar

(*a*) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him;

(*b*) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under sections 11 to 14;

(*c*) to refuse to grant an exemption under subsection (2) of section 10, section 144,

section 150 or subsection (3) of section 154 and any regulations thereunder; or

(*d*) to refuse under subsection (2) of section 366 to permit a continued reference to shares having a nominal or par value

may apply to the court for an order requiring the Registrar to change his decision; and upon the application the court may so order, and make any further order it thinks fit.

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**248.** If a company or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a company does not comply with this Act, the regulations, articles, by-laws, or any unanimous shareholder agreement of the company, a complainant or creditor of the company may, in addition to any other right he has, apply to the court for an order directing any such person to comply with, or restraining any such person from acting in breach of, any provisions of this Act, the regulations, articles, by-laws or unanimous shareholder agreement, as the case may be.

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**249.** Subject to this Act, where it is provided that a person may apply to the court, the application may be made in a summary manner by originating summons, originating notice of motion, or otherwise as the rules of the court provide, but subject to any order respecting notice to interested parties or costs, or any other order the court thinks fit.

## PART II

## PROTECTION OF CREDITORS AND INVESTORS

### Division A: Registration of Charges

gistration th Registrar.

**250.** (1) Subject to this Division, where a charge to which this section applies is created by a company, the

company shall within 28 days after the creation of the charge, lodge with the Registrar a statement of the charge and

(*a*) any instrument by which the charge is created or evidenced; or

(*b*) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and if this provision is not complied with in relation to the charge, the charge is void so far as any security interest it thereby purported to create.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge that is void under that subsection; and the money received under the charge becomes immediately payable.

(3) This section applies to all charges created by a company except

(*a*) any pledge of, or possessory lien on, goods, and

(*b*) any charge by way of pledge, deposit or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money.

Contents of charge statements.

**251.**—(1) Subject to subsections (2) and (3), the statement referred to in section 250 shall contain the following particulars;

(*a*) the date of the creation of the charge;

(*b*) the nature of the charge;

(*c*) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 255;

(*d*) short particulars of the property charged;

(*e*) the persons entitled to the charge; and

(*f*) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally, it is sufficient if there is lodged with the Registrar for registration, within 28 days after the execution of the instrument containing the charges, or, if there is no such instrument, after the execution of the first debenture of the series, a statement containing the following:

(*a*) the total amount secured by the whole series;

(*b*) the dates of the resolutions authorising the issue of the series and the date of any covering instrument by which the security interest is created or defined;

(*c*) the name of any trustee for the debenture holders; and

(*d*) the particulars specified in paragraphs (b), (d) and (f) of subsection (1).

(3) The statement referred to in subsection (2) shall be accompanied by the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy; but, if there is no such instrument, the statement shall be accompanied by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

Certified copy of instrument.

**252.** For the purposes of subsection (1) of section 250 and subsection (3) of section 251, a certified copy of an instrument or debenture is a copy of the instrument or debenture that has endorsed on it a certificate

(*a*) that states that the instrument or debenture is a true and complete copy of the original, and

(*b*) that is under seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

Later charges.

**253.** When a charge requiring registration under sections 250 to 252

(*a*) is created before the lapse of 30 days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge, and

(*b*) is given as security for the same debt that is secured by the prior charge or any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge does not operate nor is it valid unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Division.

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**254.** Sections 250 to 253 do not affect any other enactment relating to the registration of charges.

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**255.**—(1) When a charge the particulars of which require registration under section 250 is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under paragraph (c) of subsection (1) of section 251 shall state the maximum sum that is deemed to be secured by the charge, which shall be the maximum covered by the stamp duty paid thereon; and the charge is, subject to subsection (2), void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in subsection (1)

(*a*) any additional stamp duty is later paid on the charge, and

(*b*) at any time after that, but before the commencement of the winding-up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the

charge was created or evidenced, are lodged with the Registrar for registration,

then, as from the date on which it is lodged, the charge, if otherwise valid, is effective to the extent of the increased maximum sum, except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

Charge on acquisition of property.

**256.**—(1) Where a company acquires any property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division, the company shall within 28 days after the date on which the acquisition is completed, lodge with the Registrar for registration

(*a*) a statement of the particulars required by section 251 and of the date of the acquisition of the property, and

(*b*) the instrument by which the charge was created or is evidenced or a copy thereof,

accompanied by a statutory declaration as required by section 250 and certified as provided in section 252.

(2 Failure to comply with subsection (1) does not affect the validity of the charge concerned.

Duty to Register.

**257.** (1) Documents and particulars required to be lodged for registration may,

(*a*) in the case of a requirement under section 250, be lodged by the company concerned

or by any person interested in the documents, and

(*b*) in the case of a requirement under section 256, be lodged by the company concerned.

(2) A person not being the company concerned who lodges documents or particulars for registration pursuant to paragraph (a) of subsection (1) may recover from the company concerned the amount of any fees properly payable on the registration if he meets the requirements of sections 250 to 253.

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

(*a*) in any case to which subsection (2) of section 251 applies, such particulars as are required to be contained in a statement lodged under that subsection;

(*b*) in any case to which section 256 applies, such particulars as are required to be contained in a statement lodged under paragraph (a) of subsection (1) of that subsection; and

(*c*) in any other case, such particulars as are required by section 251 to be contained in a statement lodged under that section.

(2) The Registrar shall issue a certificate of every registration, stating, if applicable, the amount secured by the charge, or, in a case referred to in section 255, the maximum amount secured by the charge, and the certificate

is conclusive proof that the requirements as to registration have been complied with.

Endorsement on debenture

**259.**—(1) A company shall endorse on every debenture issued by it

(*a*) a copy of the certificate of registration of any charge related to the debenture; or

(*b*) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Subsection (1) does not apply to a debenture issued by a company before the charge was created in relation to the debenture.

Satisfaction and payment.

**260.**—(1) Where, with respect to any registered charge,

(*a*) the debt for which the charge was given has been paid or satisfied in whole or in part, or

(*b*) the property or undertaking charged, or any part thereof, has been released from the charge, or has ceased to form part of the company's property or undertaking,

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

(2) The memorandum shall be supported by evidence sufficient to satisfy the Registrar of the payment,

satisfaction, release or cessation referred to in sub-section (1).

ication or.

**261.** On being satisfied that the omission to register a charge within the time required, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum

(*a*) was accidental or due to inadvertence or to some other sufficient cause,

(*b*) is not of a nature to affect adversely the position of creditors or shareholders, or

(*c*) that, on other grounds, it is just and equitable to grant relief,

the court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court to be just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

tion py.

**262.**—(1) A company shall retain, at the registered office of the company, a copy of every instrument creating any charge that requires registration under this Division; but, in the case of a series of debentures, the retention of a copy of one debenture of the series is sufficient for the purposes of this subsection.

(2) A company shall record all charges specifically affecting property of the company, and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

Inspection of copies.

**263.** The copies of instruments retained by the company pursuant to section 262 shall be kept open for the inspection of creditors and shareholders of the company, free of charge.

Registration of receiver.

**264.**—(1) Where any person

(*a*) obtains an order for the appointment of a receiver of any of the property of a company, or

(*b*) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge,

he shall give, within 10 days from the date of the order, appointment or entry into possession, notice thereof to the Registrar, who shall enter the fact in the register of the particulars of charges relating to the company.

(2) When

(*a*) a person who has been appointed a receiver of the property of a company ceases to act as receiver, or

(*b*) a person who had entered into possession of any property of a company goes out of possession of that property,

he shall, within 10 days of his having done so, give notice of his so doing in the prescribed form to the Registrar, who shall enter the notice in the register of the particulars of charges relating to the company.

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**265.** This Division applies to charges created or acquired after the commencement of this Division, by an external company, on property in Grenada in like manner and with like consequences as if the external company were a company as defined in section 543 whether or not the external company is registered under this Act pursuant to Division B of Part III.

### Division B: Trust Deeds and Debentures

initions.

**266.** In this Division

(*a*) "event of default" means an event specified in a trust deed on the occurrence of which

(i) a security interest constituted by the trust deed becomes enforceable, or

(ii) the principal, interest and other moneys payable thereunder become, or can be declared to be, payable before maturity;

but the event is not an event of default until all conditions prescribed in the trust deed in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

(*b*) "trustee" means any person appointed as trustee under the terms of a trust deed to which a company is a party, and includes any successor trustee;

(*c*) "trust deed" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under

this Act, under which the company issues debentures and in which a person is appointed as trustee for the holders of the debentures issued thereunder.

Application of Division.

**267.** This Division applies to a trust deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

Conflict of interest.

**268.**—(1) No person may be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) Without prejudice to the generality of subsection (1), there is a material conflict of interest for the purpose of subsection (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within 90 days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee shall

(*a*) eliminate the conflict of interest, or

(*b*) resign from office.

(4) A trust deed, any debentures issued thereunder and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(5) If the trustee is appointed contrary to subsection (1) or continues as a trustee contrary to subsection (3), any interested person may apply to the court for an order that the trustee be replaced; and the court may make an order on such terms as it thinks fit.

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**269.** (1) A holder of debentures issued under a trust deed may, upon payment to the trustee of a reasonable fee, require the trustee to furnish, within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

(*a*) the names and addresses of the registered holders of the outstanding debentures of the issuer;

(*b*) the principal amount of outstanding debentures owned by each such holder; and

(*c*) the aggregate principal amount of debentures outstanding,

as shown in the records maintained by the trustee on the day that the statutory declaration is delivered to him.

(2) Upon the demand of a trustee, the issuer of debentures shall furnish the trustee with the information required to enable the trustee to comply with subsection (1).

(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection shall be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) shall state:

(*a*) the name and address of the person requiring the trustee to furnish the list, and, if the person is a body corporate, its address for service; and

(*b*) that the list will not be used except as permitted under subsection (5).

(5) A list obtained under this section shall not be used by any person except in connection with

(*a*) an effort to influence the voting of the debenture holders;

(*b*) an offer to acquire debentures; or

(*c*) any other matter relating to the debentures or the affairs of the issuer or guarantor thereof.

Evidence of compliance.

**270.**—(1) An issuer or a guarantor of debentures issued or to be issued under a trust deed shall, before doing any act that is described in paragraph (a), (b) or (c) of this subsection, furnish the trustee with evidence of compliance with the conditions in the trust deed relating to:

(*a*) the issue, certification and delivery of debentures under the trust deed;

(*b*) the release, or release and substitution, of property that is subject to a security interest constituted by the trust deed; or

(*c*) the satisfaction and discharge of the trust deed.

(2) Upon the demand of a trustee, the issuer or guarantor of debentures issued or to be issued under a trust deed shall furnish the trustee with evidence of compliance with the trust deed by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

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**271.** Evidence of compliance as required by section 270 shall consist of:

(*a*) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with;

(*b*) if the trust deed requires compliance with conditions that are subject to review by an attorney-at-law, his opinion that those conditions have been complied with; and

(*c*) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with.

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**272.** The evidence of compliance referred to in section 271 shall include a statement by the person giving the evidence

(*a*) declaring that he has read and understands the conditions of the trust deed described in section 270;

(*b*) describing the nature and scope of the examination or investigation upon which he based the certificate, statement or opinion; and

(*c*) declaring that he has made such examination or investigation as he believes necessary to enable him to make the statements or give the opinion contained or expressed therein.

Evidence relating to conditions.

**273.** Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed shall furnish the trustee with evidence in such form as the trustee may require as to compliance with any condition of the trust deed relating to any action required or permitted to be taken by the issuer or guarantor under the trust deed.

Certificate of compliance.

**274.** At least once in every 12 month period beginning on the date of the trust deed and at any other time upon the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of that failure.

Notice of default.

**275.** Within 30 days after a trustee under a trust deed becomes aware of an event of default thereunder, the trustee shall give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the debenture holders to withhold that notice and in writing so informs the issuer and guarantor.

Redemption of debenture.

**276.** (1) Debentures issued, pledged or deposited by a company are not redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

(2 Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled, or, subject to any applicable trust deed or other agreement, may be re-issued, pledged or deposited to secure any obligation of the company then existing or thereafter

incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

y of care.

**277.** A trustee under a trust deed in exercising his powers and discharging his duties shall

(*a*) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed, and

(*b*) exercise the care, diligence and skill of a reasonably prudent trustee.

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**278.** Notwithstanding section 277, a trustee is not liable if he relies in good faith upon statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

exculpation.

**279.** No term of a trust deed or of any agreement between a trustee and the holders of debentures issued thereunder, or between the trustee and the issuer or guarantor, operates to relieve a trustee from the duties imposed upon him by section 277.

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**280.** (1) The trustee under a trust deed holds all contracts, stipulations and undertakings given to him and all mortgages, charges and securities vested in him, in connection with the debentures covered by the trust deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned, except in so far as the trust deed otherwise provides.

(2) A debenture holder may

(*a*) sue the company that issued the debentures he holds for payment of any amount payable to him in respect of the debentures, or

(*b*) sue the trustee of the trust deed covering the debentures he holds for compensation for any breach of the duties that the trustee owes him,

and in any such action it is not necessary for any debenture holders of the same class, or, if the action is brought against the company, the trustee under the covering trust deed, to be joined as a party.

(3) This section applies notwithstanding anything contained in a debenture trust deed or other instrument; but a provision in a debenture or trust deed is valid and binding on all the debenture holders of the class concerned to the extent that, by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution, the provision enables a meeting of the debenture holders

(*a*) to release any trustee from liability for any breach of his duties to the debenture holders that he has already committed or generally from liability for all such breaches, without necessarily specifying them, upon his ceasing to be a trustee;

(*b*) to consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 287; or

(*c*) to consent to the substitution of debentures of a different class issued by the company or any other company