

CHAPTER 296B

SHIPPING CORPORATIONS

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CHAPTER 296B
SHIPPING CORPORATIONS

An Act to provide for the establishment of corporate bodies

1996-14.

- (a) *to own or operate ships,*
- (b) *as holding bodies corporate for corporations incorporated for the purpose of paragraph (a), and*
- (c) *to do such other things as are necessary and incidental to the ownership and operation of such ships.*

[9th September, 1996] Commence-
ment.

PRELIMINARY
Citation

1. This Act may be cited as the *Shipping Corporations Act*.

Short title.

Interpretation

2. In this Act

Definitions.

- (a) "articles" means
 - (i) the original or restated articles of incorporation, articles of amendment and articles of dissolution,
 - (ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a shipping corporation;
- (b) "court" means the High Court;
- (c) "Minister" means the Minister responsible for shipping;

- (d) "shipping corporation" or "corporation" means a body incorporated under section 5;
- Cap. 296. (e) "Principal Registrar" has the meaning assigned to it by section 2 of the *Shipping Act*;
- (f) "Public corporation" means a corporation any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 358, or are intended for distribution to the public;
- Cap. 296. (g) "Registrar" has the meaning assigned to it by section 2 of the *Shipping Act*; and
- Cap. 296. (h) "ship" has the meaning assigned to it by section 2 of the *Shipping Act*, and includes and oil-rig, an accommodation platform and any similar structure, a hovercraft and a hydrofoil.
- Purposes. **3.** (1) The purposes of this Act are to provide for the establishment of bodies corporate with the following objects only
- (a) to own or operate ships, and
- (b) to do such other things as are necessary and incidental to the ownership and operation of such ships.
- (2) A corporation incorporated under this Act may be a holding body corporate for other corporations incorporated for the purpose of subsection (1).
- (3) This Act shall be given such fair, large and liberal interpretation and construction as would best ensure the attainment of its purposes.
- Application. **4.** This Act applies to shipping corporations incorporated under this Act.

PART I

FORMATION AND OPERATION OF SHIPPING
CORPORATIONS

5. (1) Subject to subsection (2), one or more persons may incorporate a shipping corporation by signing and sending articles of incorporation to the Registrar together with the prescribed fee.

(2) No individual who

(a) is less than 18 years of age;

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

(c) has the status of a bankrupt,

shall form or join in the formation of a shipping corporation under this Act.

(3) If articles of incorporation submitted to the Registrar are accompanied by a statutory declaration by an attorney-at-law, in the case of a declaration executed in Barbados, that to the best of his knowledge and 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.

(4) Where a signatory to articles of incorporation is not present in Barbados he may execute a statutory declaration that to the best of his knowledge and belief he is not an individual described in subsection (2); and a declaration so described and verified on oath before a diplomatic or consular representative for Barbados is *prima facie* evidence of the facts therein declared.

6. (1) Articles of incorporation must follow the prescribed form and set out, in respect of the proposed corporation

(a) the proposed name of the corporation;

(b) the purpose for which the corporation is formed which must be in accordance with section 3;

- (c) the duration of the corporation, if not perpetual;
- (d) the registered office of the corporation in Barbados and the name and address of its agent, in Barbados, who may be a body corporate;
- (e) the classes and any maximum number of shares that the corporation is authorised to issue; and
 - (i) if a class of shares can be issued in a 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;
 - (ii) if there will be 2 or more classes of shares, the designation of each class and the rights, privileges, restrictions and conditions attaching to the shares of each class;
- (f) the number of directors, or, subject to section 67, the minimum and maximum number of directors of the corporation;
- (g) the names and addresses of the persons who will serve as directors;
- (h) the name and address of the attorney referred to in section 24; and
- (i) the name and address of each incorporator.

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

(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.

Required
votes.

7. (1) Subject to subsection (2), if the articles 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 prevail.

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 70.

8. An incorporator must send to the Registrar with the articles of incorporation the documents required by subsection (1) of section 24, subsection (1) of section 66, subsection (1) of section 146 and section 302. Documentation.

Certificate of Incorporation

9. Upon receipt of articles of incorporation, the Registrar must issue a certificate of incorporation in accordance with section 302; and the certificate is conclusive proof of the incorporation of the shipping corporation named in the certificate. Certificate of incorporation.

10. A corporation comes into existence on the date shown in its certificate of incorporation. Effective date.

Corporate Name

11. The words "shipping corporation" or the abbreviation "shp. corpn." must be part of the name of every shipping corporation; but a shipping corporation may be legally designated by either the full or the abbreviated form. Corporate name.

12. A corporation must not be incorporated with or have a name Reserved name.

(a) that is prohibited or refused under section 314 and 315; or

(b) that is reserved for another corporation or intended corporation under section 313.

13. Where, through inadvertence or otherwise, a corporation Name change.

(a) comes into existence with name that contravenes section 12, or

(b) is, upon application to change its name, granted a name that contravenes section 12,

the Registrar may direct the corporation to change its name in accordance with section 175.

Name
revocation.

14. Where a corporation has been directed under section 13 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 the corporation and assign to it a name; and until changed in accordance with section 174, the name of the corporation is thereafter the name so assigned.

Assigned
name.

15. (1) When a corporation has had its name revoked and a name assigned to it under section 14, the Registrar must issue a certificate of amendment showing the new name of the corporation and must 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 corporation to which the certificate refers are amended accordingly on the date shown in the certificate.

Pre-Incorporation Agreements

Pre-
incorpora-
tion
contracts.

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 corporation 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 the corporation comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract before it comes into existence.

(3) When a corporation adopts a contract under subsection (2)

(a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation 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 corporation 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 corporation is adopted by the corporation, 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 corporation and a person who purported to act in the name of the corporation 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 corporation before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

PART II

CAPACITY AND POWERS

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

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

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

(4) This section does not authorise any corporation to carry on any business or activity that contravenes section 3.

18. A corporation shall not exercise any power that it is restricted by its articles from exercising, nor shall a corporation exercise any of its powers in a manner contrary to its articles. Powers reduced.

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

Notice not presumed.

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

No disclaimer allowed.

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

- (a) that any of the articles, or by-laws of the corporation has not been complied with;
- (b) that the persons named in the most recent notice to the Registrar under section 66 or 74 are not the directors of the corporation;
- (c) that the place named in the most recent notice sent to the Registrar under section 146 is not the registered office of the corporation;
- (d) that a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such a director, officer or agent;
- (e) that a document issued by any director, officer or agent of the corporation 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 132 was not authorised,

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

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

Contracts of a corporation.

- (a) is effective in law in point of form and binds the corporation and the other party to the contract; and
- (b) may be varied or discharged in the like manner that is authorised by this section to be made.

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

(3) A contract that, if made between individuals, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the corporation.

(4) A contract that, if made between individuals, would, by law, be valid although made by parol only and not reduced to writing may be made by parol on behalf of the corporation.

23. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of the corporation, if made, accepted or endorsed in the name of the corporation or if expressed to be made, accepted or endorsed on behalf or on account of the corporation.

Bills and notes.

24. (1) A corporation must file with the Registrar a fully executed power of attorney in the prescribed form that will empower some person named in the power and resident in Barbados to act as the attorney of the corporation for the purpose of receiving service of process in all suits and proceedings by or against the corporation in Barbados, and of receiving all lawful notices.

Attorney of corporation.

(2) A power of attorney under subsection (1) must declare that service of process in respect of suits and proceedings by or against the corporation and of lawful notices on the attorney will be binding on the corporation for all purposes.

(3) If an attorney named in a power of attorney executed by a corporation under this section ceases to reside in Barbados, or if the power of attorney becomes invalid or ineffectual for any other reason, the corporation must file another power of attorney pursuant to subsection (1).

(4) Service of process and notices on an attorney for a corporation appointed under a power of attorney registered under this section is legal and binding service on the corporation.

(5) When an attorney for a corporation appointed under a power registered under this section signs a deed on behalf of the corporation, the deed is binding on the corporation in Barbados if the corporation has empowered the attorney to execute deeds and he executes it with the attorney's own seal.

(6) A deed that is binding under subsection (5) on a corporation has the same effect as if it were under the seal of the corporation.

Power:
execution of
deeds.

25. (1) Without affecting section 24, a corporation may, by writing under seal, empower any person, either generally or in respect of any specified matter, as its attorney to execute deeds on its behalf in any place outside Barbados.

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

Corporation
seals.

26. (1) A corporation must have a common seal with its name engraven thereon in legible characters; but, except when required by any enactment to use its common seal, the corporation may, for the purpose of sealing any document, use its common seal or any other form of seal.

(2) If authorised by its by-laws, a corporation may have for use in any country other than Barbados or for use in any district or place not situated in Barbados, an official seal, which must be a facsimile of the common seal of the corporation 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 corporation is duly affixed binds the corporation as if it had been sealed with the common seal of the corporation.

(4) A corporation may, by an instrument in writing under its common seal, authorise any person appointed for that purpose to affix the corporation's official seal to any document to which the corporation 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 corporation 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.

PART III

SHARE CAPITAL

Shares

27. (1) Shares in a corporation are personal estate and are not of the nature of real estate; and a share is transferable in the manner provided by this Act. Nature of shares.

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

(3) Subject to subsection (4), each share in a corporation must be distinguished by an appropriate designation.

(4) If at any time all the issued shares in a corporation, or all the issued shares in a corporation of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as it ranks equally for all purposes with all shares for the time being issued, or, as the case may be, all the shares for the time being issued for the particular class.

Only one class of shares.

28. When a corporation has only one class of shares, the rights of the holders are equal in all respects, and include

- (a) the right to vote at any meeting of shareholders;
- (b) the right to receive any dividend declared by the corporation;
- (c) the right to receive the remaining property of the corporation on dissolution.

Share classes.

29. The articles of a corporation may provide for more than one class of shares; and, if they so provide

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the articles; and
- (b) the rights set out in section 28 must 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.

30. (1) Subject to the articles, the by-laws 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 corporation may issue bearer shares or bearer share certificates.

Consideration.

31. (1) A share may 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 corporation 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 corporation.

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

32. (1) A corporation must maintain a separate stated capital account for each class and series of shares that it issues.

Stated
capital
accounts.

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

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

(4) A corporation must 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 corporation 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 must be approved by special resolution if

- (a) the amount to be added was not received by the corporation as consideration for the issue of shares; and
 - (b) the corporation has issued any outstanding shares of more than one class or series.
- (6) Notwithstanding section 31 and subsection (2)
- (a) when, in exchange for property, a corporation issues shares
 - (i) to a body corporate that was an affiliate of the corporation immediately before the exchange, or
 - (ii) to a person who controlled the corporation before the exchange,

the corporation, 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 corporation, and the body corporate or person, to be the consideration for the shares so exchanged;

- (b) when a corporation issues shares in exchange for shares of a body corporate that was an affiliate of the corporation immediately before the exchange, the corporation 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 corporation issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the corporation, the corporation 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.

Series
shares.

33. (1) The articles of a corporation 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 must send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a corporation of articles of amendment designating a series of shares, the Registrar must on payment of the prescribed fee issue to the corporation a certificate of amendment in accordance with section 302.

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

34. (1) If the articles so provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the corporation holding shares of that class; and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others. Pre-emptive rights.

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

(a) for a consideration other than money;

(b) as a share dividend; or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

35. (1) A corporation may grant conversion privileges, options or rights to acquire shares of the corporation, but must set out the conditions thereof in any certificates or other instruments issued in respect thereof. Conversion privileges.

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

Reserve
shares.

36. Where a corporation

(a) has granted privileges to convert any debentures or shares issued by the corporation into shares or into shares of another class or series of shares; or

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

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

Own shares.

37. Except as provided in sections 38 to 41, a corporation shall not hold shares in itself, or in its holding body corporate.

Exemptions.

38. (1) A corporation 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 corporation 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 corporation may purchase or otherwise acquire shares issued by it.

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

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

(b) the realisable value of the corporation's assets would, after that payment, be less than the aggregate of its liabilities and stated capital of all classes.

40. (1) Notwithstanding subsection (2) of section 45, but subject to subsection (3) and to its articles, a corporation may purchase or otherwise acquire its own issued shares Other acquisition.

- (a) to settle or compromise a debt or claim asserted by or against the corporation;
- (b) to eliminate fractional shares; or
- (c) to fulfil the terms of a non-assignable agreement under which the corporation has an option or is obligated to purchase shares owned by a director, an officer or an employee of the corporation.

(2) Notwithstanding subsection (2) of section 39, a corporation may purchase or otherwise acquire its own issued shares

- (a) to satisfy the claim of a shareholder who dissents under section 181; or
- (b) to comply with an order of the court made in accordance with section 194.

(3) A corporation 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 corporation is unable, or would, after that payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation'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 liquidation of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired.

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 corporation 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. Redeemable shares.

(2) A corporation 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 corporation is unable or would, after that payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation'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 liquidation, rateably with or before the holders of the shares to be purchased or redeemed.

Gift of
shares.

42. Subject to section 46, a corporation may accept from any shareholder a share of the corporation surrendered as a gift.

Voting
thereon.

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

- (a) holds the shares in the capacity of a legal representative; and
- (b) has complied with section 142.

Stated
capital
reduction.

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

- (a) returning any amount in respect of consideration that the corporation received for an issued share, whether or not the corporation purchases, redeems or otherwise acquires any share or fraction thereof that it issued; and
- (b) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

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

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

- (a) the corporation is unable, or would, after that reduction, be unable, to pay its liabilities as they become due; or
- (b) the realisable value of the corporation's assets would thereby be less than its liabilities.

(4) A corporation that reduces its stated capital under this section must, 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 corporation.

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

- (a) to pay to the corporation 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 corporation 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 83 or 84.

45. (1) Upon a purchase, redemption or other acquisition by a corporation under section 39, 40, 41, 57 or 181 or pursuant to an order under paragraph (f) of subsection (3) of section 194, of shares or fractions thereof issued by it, the corporation must 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

Stated
capital
adjustment.

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 corporation must deduct the amount of a payment made by the corporation to a shareholder under paragraph (f) of subsection (3) of section 194 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation must 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 174 or 194, of issued shares of a corporation into shares of another class or series, the corporation must

- (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 corporation 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 corporation issues 2 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.

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

Cancellation of shares.

47. For the purposes of sections 45 and 46, a corporation holding shares in itself as permitted by section 38 is deemed not to have purchased, redeemed or otherwise acquire those shares.

Presumption re: own shares.

48. (1) Shares issued by a corporation and converted or changed under section 174 or 194 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

Changing share class.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a corporation and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series must, unless the articles of amendment otherwise provide, be increased by the number of shares that, pursuant to subsection (1) became shares of another class or series.

49. (1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 39 or 40.

Effect of contract to purchase shares.

(2) In any action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prohibited by section 39 or 40.

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

- (a) to be paid as soon as the corporation is lawfully able to do so; or
- (b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.

Commission
for share
purchase.

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

Prohibited
dividend.

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

- (a) the corporation is unable, or would, after the payment, be unable, to pay its liabilities as they become due; or
- (b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

Payment of
dividend.

52. (1) A corporation may pay a dividend by issuing fully paid shares of the corporation, and, subject to subsection (2) and section 51, a corporation may pay a dividend in money or property.

(2) A corporation shall not pay a dividend out of unrealised profits.

(3) If shares of a corporation are issued in payment of a dividend, the value of the dividend stated as an amount in money must 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.

Illicit loans
to directors.

53. (1) When circumstances prejudicial to the corporation exist, the corporation shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder, director, officer or employee of the corporation or affiliated corporation or to an associate of any such person for any purpose; or
- (b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the corporation or a corporation with which it is affiliated.

(2) Circumstances prejudicial to the corporation exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that

- (a) the corporation is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregate of the corporation's liabilities and stated capital of all classes.

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

Permitted loans to directors.

- (a) on account of expenditures incurred or to be incurred on behalf of the corporation;
- (b) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;
- (c) to subsidiary body corporate of the corporation; and
- (d) to employees of the corporation or any of its affiliates
 - (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 corporation 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 loans.

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

Immunity of
sharehold-
ers.

56. The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection (5) of section 44 or subsection (5) of section 288.

Lien on
shares.

57. (1) Subject to this Act, the articles of a corporation may provide that the corporation 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 corporation.

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

PART IV

MANAGEMENT OF CORPORATIONS

The Directors

Duty to
manage
corpora-
tions.

58. Subject to any unanimous shareholder agreement, the directors of a corporation must

- (a) exercise the powers of the corporation directly or indirectly through the employees and agents of the corporation; and
- (b) direct the management of the business and affairs of the corporation.

Number of
directors.

59. A corporation must have at least one director, but the number of directors may be fixed by the articles or by the shareholders where the articles so provide.

60. If the powers of the directors of a corporation to manage the business and affairs of the corporation are in whole or in part restricted by the articles of the corporation, 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.

Restricted powers.

61. (1) Unless the articles or by-laws otherwise provide, the directors of a corporation may by resolution make, amend or repeal any by-laws for the regulation of the business or affairs of the corporation.

By-law powers.

(2) The directors of a corporation must submit a by-law, or any amendment or repeal of a by-law, made under subsection (1) to the shareholders of the corporation 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 or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

Organisa-
tional
meeting.

62. (1) After the issue of a certificate of incorporation of a corporation, a meeting of the directors of the corporation must be held at which the directors must

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving by post not less than 5 days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

Person
disqualified
from being
a director.

63. (1) An individual who is prohibited by subsection (2) of section 5 from forming or joining in the formation of a corporation may not be a director of any corporation.

(2) When a person is disqualified under section 64 from being a director of a corporation, that person may not, during that period of disqualification, be a director of any corporation.

Directors
disqualified
by court.

64. (1) Where, on the application of the Registrar, it is made to appear to the court that a person is unfit to be concerned in the management of a corporation, the court may order that, without the prior leave of the court, he may not be a director of the corporation, or, in any way, directly or indirectly, be concerned with the management of the corporation for such period

- (a) beginning
 - (i) with the date of the order, or

(ii) if the person is undergoing, or is to undergo a term of imprisonment, whether in Barbados or elsewhere, 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 an order under subsection (1), the court must have regard to all the circumstances that it considers relevant, including any previous convictions of the person in Barbados or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any person, the Registrar must give that person not less than 10 days' notice of the Registrar's intention to make the application.

(4) On the hearing of an application made by the Registrar under this section or an application for leave under this section to be concerned with the management of a corporation, the Registrar and any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

65. Unless the articles of a corporation otherwise provide, a director of the corporation need not hold shares issued by the corporation. No qualification required.

66. (1) At the time of sending articles of incorporation of a corporation to the Registrar, the incorporators must send him, in the prescribed form, a notice of the names of the directors of the corporation; and the Registrar must file the notice. Notice of directors.

(2) Each director named in the notice referred to in subsection (1) holds office as a director of the corporation from the issue of the certificate of incorporation of the corporation until he is removed by the shareholders of the corporation or sooner dies.

(3) Articles may provide for the election of one or more directors for shares of any class or series.

(4) The articles of a corporation may provide for the election or appointment of directors by the creditors or employees of the corporation or by any classes of these creditors or employees.

Cumulative
voting.

67. Where the articles of a corporation provide for cumulative voting, the following rules apply

- (a) articles must 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 must be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 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 must be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (f) 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 an election at which the same total number of votes were cast and the number of directors required by the articles were then elected; and

(g) 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.

68. A director of a corporation ceases to hold office when

Termination
of office.

(a) he dies or resigns;

(b) he is removed in accordance with section 70;

(c) he becomes disqualified under section 63 or 64.

69. The resignation of a director of a corporation becomes effective at the time his written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Resignation
of director.

70. (1) Subject to paragraph (f) of section 67, the shareholders of a corporation may, by ordinary resolution at a special meeting, remove any director from office.

Removal of
director.

(2) Where the holders of any class or series of shares of a corporation 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 paragraphs (b) to (e) of section 67, 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 72.

71. (1) A director of a corporation is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders.

Right to
notice.

(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,

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

(3) The corporation 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 corporation 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.

72. (1) Subject to subsections (3) and (4), a quorum of directors of a corporation may fill a vacancy among the directors of the corporation, 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 of directors required by the articles of the corporation.

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

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

- (a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number

of directors for that class or series, or from a failure to elect the number or minimum number of directors for that class or series; or

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

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

(a) by a vote of the shareholder; or

(b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.

73. The shareholders of a corporation may amend the articles of the corporation to increase, or, subject to paragraph (g) of section 67, to decrease, the number of directors, or the minimum or maximum number of directors. Numbers changed.

74. (1) Within 15 days after a change is made among its directors, a corporation must send to the Registrar a notice in the prescribed form setting out the change; and the Registrar must file the notice. Notice of change.

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

75. (1) Unless the articles or by-laws of a corporation otherwise provide, the directors of a corporation may meet at any place, and upon such notice as the by-laws require. Directors' meeting.

(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.

76. (1) A notice of a meeting of the directors of a corporation must specify any matter referred to in subsection (2) of section 80 that is to be dealt with at the meeting; but, unless the by-laws of the corporation otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

(2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when 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.

Adjourned
meeting.

77. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

One director
board.

78. Where a corporation has only one director that director may constitute a meeting.

Telephone
participa-
tion.

79. (1) Subject to the by-laws of a corporation, a director may, if all the directors of the corporation consent, participate in a meeting of directors of the corporation or of a committee of the directors by means of participating in the meeting to hear each other.

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

Delegation
of powers.

80. (1) Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no committee of directors of a corporation may

(a) submit to the shareholders any question or matter requiring the 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 corporation;
- (f) pay a commission referred to in section 50;
- (g) approve a management proxy circular referred to in Part VI; or
- (h) adopt, amend or repeal by-laws.

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

82. (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 Resolution in writing.

- (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) must be kept with the minutes of the proceedings of the directors or committee of directors.

Liabilities of Directors

83. Directors of a corporation who vote for or consent to a resolution authorising the issue of a share under section 30 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution. Liability for share issue.

Liability for
other acts.

84. Directors of a corporation 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 the provisions of sections 182 to 190 or 194,

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

Contribution
for
judgment.

85. A director who has satisfied a judgment founded on a liability under section 83 or 84 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.

86. (1) A director who is liable under section 83 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, 97 to 101 or 181 to 190 or 194;
- (b) order a company to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

87. A director of a corporation is not liable under section 83 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 corporation would have received if the share had been issued for money. Defence to liability.

88. An action to enforce a liability imposed under section 83 or 84 may not be commenced after 2 years from the date of the resolution authorising the action complained of. Time limit on liability.

Contractual Interest

89. (1) A director or officer of a corporation Conflict of interest.

(a) who is a party to a material contract or proposed material contract with the corporation; 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 corporation,

must disclose in writing to the corporation 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) must be made, in the case of a director of a corporation

(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 corporation, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) must be made, in the case of an officer of a corporation 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 corporation;
- (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 corporation, 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 corporation's business, would not require approval by the directors or shareholders of the corporation, a director or officer of the corporation must disclose in writing to the corporation, 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 corporation 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 corporation;
- (b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the corporation;
- (c) is a contract for indemnity or insurance under sections 97 to 101; or
- (d) is a contract other than one referred to in paragraphs (a) to (c);

but, in the case of a contract described in paragraph (d), no resolution is valid unless it is approved by not less than two-thirds of the votes of the shareholders of the corporation to whom notice of the nature and

extent of the director's interest in the contract is declared and disclosed in reasonable detail.

90. For the purposes of section 89, a general notice to the directors of a corporation by a director or an officer of the corporation 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. Declaration of interest.

91. A material contract between a corporation and one or more of its directors or officers, or between a corporation and another body of which a director or officer of the corporation is a director or officer, or in which he has a material interest, is neither void nor voidable Avoidance of nullity.

(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 89 or section 90, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the corporation at the time it was approved.

92. When a director or officer of a corporation fails to disclose, in accordance with section 89 or 90, his interest in a material contract made by the corporation, the court may, upon the application of the corporation or a shareholder of the corporation set aside the contract on such terms as the court thinks fit. Setting aside contract.

Officers of the Corporation

93. (1) Subject to the articles or by-laws of a corporation Designation of offices, etc.

(a) the directors of the corporation may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the

business and affairs of the corporation, except powers to do anything referred to in subsection (2) of section 80;

- (b) a director may be appointed to any office of the corporation; and
- (c) two or more offices of the corporation may be held by the same person.

(2) A director of a corporation may be of any nationality but shall not be resident in Barbados.

Borrowing Powers of Directors

Borrowing
powers.

94. (1) Unless the articles or by-laws of, or any unanimous shareholder agreement relating to, the corporation otherwise provide, the articles of a corporation are presumed to provide that the directors of the corporation may, without authorisation of the shareholders

- (a) borrow money upon the credit of the corporation;
- (b) issue, re-issue, sell or pledge debentures of the corporation;
- (c) subject to section 53, give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the corporation a security interest in all or any property of the corporation that is owned or subsequently acquired by the corporation.

(2) Notwithstanding subsection (2) of section 80 and paragraph (a) of section 93, unless the articles or by-laws of a corporation otherwise provide, the directors of the corporation may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the corporation.

(3) For the purposes of this Act "security interest" means any interest in or charge upon any property of a corporation, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the corporation.

Duties of Directors and Officers

95. (1) Every director and officer of a corporation in exercising his powers and discharging his duties must Duty of care.

- (a) act honestly and in good faith with a view to the best interests of the corporation; 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 corporation, a director must have regard to the interests of the corporation'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 corporation is owed by them to the corporation alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a corporation by its directors.

(4) Every director and officer of a corporation must comply with this Act and the regulations, and with the articles and by-laws of the corporation.

(5) No provision in a contract, the articles of a corporation, its by-laws or any resolution, relieves a director or officer of the corporation 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.

96. (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 Dissenting to resolutions.

- (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 corporation 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 corporation.

(4) A director is not liable under section 83, 84 or 95 if he relies in good faith upon

(a) financial statements of the corporation represented to him by an officer of the corporation; 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.

Indemnities

Indemnify-
ing
directors,
etc.

97. (1) Except in respect of an action by or on behalf of a corporation to obtain a judgment in its favour, a corporation may indemnify

(a) a director or officer of the corporation;

(b) a former director or officer of the corporation; or

(c) a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation 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 corporation 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 corporation; 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.

98. A corporation may with the approval of the court indemnify a person referred to in section 97 in respect of an action For derivative action.

- (a) by or on behalf of the corporation 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 corporation 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 97.

99. Notwithstanding anything in section 97 or 98, a person described in section 97 is entitled to indemnity from the corporation 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 corporation or body corporate, if the person seeking indemnity Right to 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 97 or 98; and
- (c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

100. A corporation may purchase and maintain insurance for the benefit of any person referred to in section 97 against any liability incurred by him under paragraph (b) of subsection (1) of section 95 in his capacity as a director or officer of the corporation.

Court approval of indemnity.

101. (1) A corporation or person referred to in section 97 may apply to the court for an order approving an indemnity under section 98; and the court may so order and make any further order it thinks fit.

(2) An applicant under subsection (1) must 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.

102. Subject to its articles or by-laws, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

PART V

SHAREHOLDERS OF CORPORATIONS

Meetings

Place of meetings.

103. (1) Meetings of shareholders of a corporation must be held at the place within Barbados provided in the by-laws, or, in the absence of any such provision, at the place within Barbados that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside Barbados if all the shareholders entitled to vote at the meeting so agree.

(3) A shareholder who attends a meeting of shareholders held outside Barbados 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.

104. Notwithstanding section 103, if the articles of a corporation so provide, meetings of shareholders of the corporation may be held outside Barbados at one or more places specified in the articles.

Meetings
outside
Barbados.

105. The directors of a corporation

Calling
meetings.

- (a) must call a meeting of shareholders not later than 18 months after the corporation comes into existence, but need not call a subsequent meeting unless a meeting is requisitioned pursuant to section 128; and
- (b) may any time call a special meeting of shareholders.

106. (1) For the purpose of

Record date
of share-
holders.

- (a) determining the shareholders of the corporation who are
- (i) entitled to receive payment of a dividend,
- (ii) entitled to participate in a liquidation distribution; or
- (b) determining the shareholders of the corporation 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 must not precede by more than 50 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 corporation, the directors of the corporation may fix in advance a date as the record date for the determination of shareholders; but the record date must not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

107. If no record date is fixed

Statutory
date.

- (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 meeting.

108. (1) Notice of the time and place of a meeting of shareholders must be sent not less than 21 days nor more than 50 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 corporation.

(2) A notice of a meeting of shareholders of a corporation is not required to be sent to shareholders of the corporation who were not registered on the records of the corporation or its transfer agent on the record date determined under section 106 or 107, 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 must 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 140 does not apply.

109. (1) All business transacted at any meeting of shareholders is special business, except

- (a) the consideration of the financial statements;
- (b) the auditor's report;
- (c) the election of directors; and
- (d) the re-appointment of the incumbent auditor.

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

- (a) the nature of that business in sufficient detail to permit the shareholders to form a reasoned judgment thereon; and
- (b) the text of any special resolutions to be submitted to the meeting.

110. 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.

Proposals and Proxies

111. A shareholder of a corporation who is entitled to vote at a meeting of the shareholders may

- (a) submit to the corporation notice of any matter that he proposes to raise at the meeting, in this Part 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.

112. (1) A corporation that solicits proxies must set the proposal out in the management proxy circular required by section 138 or attach the proposal to that circular.

(2) If so requested by a shareholder who submits a proposal to a corporation, the corporation must 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.

113. 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 per cent of the share of the corporation; or

(b) 5 per cent of the shares of a class of shares of the corporation,

entitled to vote at the meeting to which the proposal is to be presented; but this subsection does not preclude nominations made at a meeting of shareholders of a corporation that is not required to solicit proxies under section 137.

Non-
compliance
with proxy
solicitation.

114. (1) A corporation is not required to comply with section 112 if

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

(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 corporation 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 corporation, 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.

115. No corporation, or person acting on its behalf, incurs any liability by reason only of circulating a proposal or statement in compliance with this Act. Publishing immunity.

116. When a corporation refuses to include a proposal in a management proxy circular, the corporation must, 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 corporation must send him a statement of the reasons for its refusal. Refusal notice.

117. Upon application to the court by a shareholder of a corporation who is claiming to be aggrieved by the corporation's refusal under section 116 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. Restraining meeting.

118. A corporation or any person claiming to be aggrieved by a proposal submitted to the corporation may apply to the court for an order permitting the corporation to omit the proposal from its management proxy circular; and the court may, if it is satisfied that section 114 applies, make such order as it thinks fit. Right to omit proposal.

Registrar's
notice.

119. An applicant under section 117 or 118 must give the Registrar notice of the application, and the Registrar may appear and be heard in person or by an attorney-at-law.

Shareholder Lists

List of
share-
holders.

120. (1) A corporation must

- (a) not later than 10 days after the record date is fixed under subsection (2) of section 106, 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 corporation fixes a record date under subsection (2) of section 106, 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 corporation after the record date fixed by the corporation, if the transferee of those shares

- (a) produces properly endorsed share certificates to the corporation or otherwise establishes to the corporation that he owns the shares; and
- (b) demands, not later than 10 days before the meeting of the shareholders of the corporation, 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 corporation does not fix a record date under subsection (2) of section 106, 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.

121. A shareholder of a corporation may examine the list of its shareholders Examination of list.

(a) during usual business hours at the registered office of the corporation 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

122. (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. Quorum at meetings.

(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 corporation 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.

Voting the Shares

Right to
vote share. **123.** Unless the articles of the corporation 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.

Representa-
tive of other
body. **124.** (1) When a body corporate or association is a shareholder of a corporation, the corporation must 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 corporation.

(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.

Joint share-
holders. **125.** 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 must vote as one on the shares jointly held by them.

Voting
method at
meetings. **126.** (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders must be by a show of hands, except when a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

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

Resolution
in writing. **127.** (1) Except where a written statement is submitted by a director under section 71

(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) must be kept with the minutes of the meetings of shareholders.

Compulsory Meeting

128. (1) The holders of not less than 5 per cent of the issued shares of a corporation 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.

Requisitioned shareholders meeting.

(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 corporation, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the corporation.

(3) Upon receiving a requisition referred to in subsection (1), the directors must 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 106;
- (b) the directors have called a meeting of shareholders and have given notice thereof under section 108; or
- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs (b) to (e) of section 114.

(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 must be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, and this Part.

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

Court called
meeting.

129. (1) Upon the application to the court by a director of a corporation or a shareholder of the corporation 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) 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 corporation called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

Controverted Affairs

Court review
controversy.

130. (1) A corporation 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 corporation.

(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 corporation 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.

Shareholder Agreements

131. (1) A written agreement between 2 or more shareholders of a corporation may provide that in exercising voting rights the shares held by them will be voted as provided in the agreement. Pooling agreement.

(2) A third party is not bound by an agreement referred to in subsection (1) unless he has express notice thereof.

Shareholder Approval

132. (1) A sale, lease or exchange of all, or substantially all, the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with this section. Extra-ordinary transaction.

(2) A notice of a meeting of shareholders complying with section 108 must be sent in accordance with that section to each shareholder and must

- (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 181;

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 corporation 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 corporation 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 corporation, 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.

PART VI

PROXIES

Definitions. **133.** (1) In this Act

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

- (b) "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;
- (c) "registrant" means a broker or dealer required to be registered to trade or deal in shares or debentures under the law of any jurisdiction;
- (d) "solicit" or "solicitation" includes, subject to subsection (2)
- (i) a request for a proxy, whether or not accompanied with or included in a form of proxy;
 - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy;
 - (iii) 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; and
 - (iv) the sending of a form of proxy to a shareholder under section 137;
- (e) "solicitation by or on behalf of the management of a corporation" 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 corporation 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 142; or

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

Proxy Holders

Proxy
appoint-
ment.

134. (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 must be executed in writing by the shareholder or his attorney authorised in writing.

(3) Unless otherwise stated therein a proxy is valid for a period of 11 months.

Revocation
of proxy.

135. (1) Subject to this section, a proxy is revocable at the pleasure of the shareholder.

(2) A shareholder of a corporation 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 corporation 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.

(3) A proxy is irrevocable if it states that it is irrevocable and it is coupled with an interest to support an irrevocable power, including a proxy held by

(a) a pledgee;

(b) a person who has purchased or agreed to purchase the shares;

-
- (c) a creditor of the corporation who extends or continues credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof and the name of the person extending or continuing the credit;
- (d) a person who has contracted to perform services as an officer of the corporation, if a proxy states that it was given in consideration of such contract of employment, the name of the employee and the period contracted for; or
- (e) a nominee of any person referred to in paragraphs (a) to (d).
- (4) A proxy referred to in subsection (3) becomes revocable
- (a) when the pledge is redeemed;
- (b) when the debt of the corporation is paid;
- (c) when the period of employment provided for in the contract of employment has terminated;
- (d) at the end of the period specified therein as the period during which the proxy is stated to be irrevocable.

(5) Notwithstanding any provision in a proxy, a proxy may be revoked where shares are acquired by a purchaser for value without notice of the irrevocable proxy.

(6) A proxy is revoked by the death or mental incapacity of the shareholder; but the corporation is not liable for the exercise of any power under the proxy by the proxy holder where the corporation has not received notice in writing of the mental incapacity or death of the shareholder.

136. (1) The directors of a corporation may specify in a notice calling a meeting of the shareholders of the corporation 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 must be deposited with the corporation or its agent. Deposit of
PROXY.

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

Mandatory solicitation of proxy.

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

Prohibited solicitation.

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

(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 corporation; or

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

Documents for Registrar.

139. A person required to send a management proxy circular or dissident's proxy circular must 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.

Exemption by Registrar.

140. 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 137 or 138; and the exemption may be given retroactive effect by the Registrar.

Proxy attending meeting.

141. (1) A person who solicits a proxy and is appointed proxy holder must

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- (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.

Share Registrants

142. (1) Shares of a corporation 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 receipt thereof sends to the beneficial owner

Registrant's
duty.

- (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 must, 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 must 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 corporation, the registrant of those shares must 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.

Governing
prohibition.

143. Nothing in section 142 gives a registrant the right to vote shares that he is otherwise prohibited from voting.

Remedial Powers

Restraining
order.

144. (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 of 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 must give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

PART VII

CORPORATE RECORDS

Registered Office of Corporation

145. (1) A corporation must at all times have a registered office in Barbados. Registered office.

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

146. (1) At the time of sending articles of incorporation, the incorporators must send to the Registrar, in the prescribed form, notice of the address of the registered office of the corporation; and the Registrar must file the notice. Notice of address.

(2) A corporation 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 must file.

Corporation Registers and Records

147. (1) A corporation shall prepare and maintain at its registered office or at any place outside Barbados designated by the directors of the corporation records containing Records of corporation.

- (a) the articles and the by-laws, and all amendments thereto;
- (b) minutes of meetings and resolutions of shareholders; and
- (c) copies of all notices required by section 66, 74 or 146.

(2) A corporation shall maintain a register of shareholders showing

- (a) the name and the latest known address of each person who is a shareholder;
- (b) a statement of the shares held by each shareholder;
- (c) the date on which each person was entered on the register as a shareholder, and the date on which any person ceased to be a shareholder.

(3) A corporation that issues debentures shall 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 a debenture holder.

(4) A corporation that grants conversion privileges, options, or rights to acquire shares of the corporation shall maintain a register showing the name and the 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.

(5) A corporation may appoint an agent to maintain the registers required by this section to be maintained by the corporation; but the registers must be maintained at the registered office of the corporation or at some place within or outside Barbados designated by the directors of the corporation.

(6) Where records referred to in this section are maintained outside Barbados copies thereof duly certified shall be maintained in Barbados at the registered office, or some place designated by the directors, of the corporation.

Records of Trusts

148. (1) Except as provided in this section, notice of a trust, Trusts records.
express, implied or constructive, must not be

- (a) entered by a corporation in any of the registers maintained by it pursuant to section 147, 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 corporation 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 corporation as a shareholder 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 corporation that is registered in a register of the corporation may, with the consent of the corporation and of the registered shareholder or debenture holder, become the registered shareholder 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) or (4) as a holder of a share or debenture of a corporation, 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 had the share or debenture remained registered in the name of the deceased individual.

Accounts, Minutes and other Records

Other records.

149. In addition to the records described in section 147, a corporation shall prepare and maintain adequate accounting records to enable the directors to ascertain the financial position of the corporation with reasonable accuracy and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

Form of Records

Records form.

150. 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.

Care of Records

Duty of care for records.

151. A corporation 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 corporation.

Access to Records

152. (1) The directors and shareholders of a corporation, and their agents and legal representatives, may, during the usual business hours of the corporation, examine the records of the Corporation referred to in section 147 and may take extracts therefrom free of charge. Access to records.

(2) A shareholder of a corporation is, upon request and without charge, entitled to one copy of the articles and by-laws of the corporation and to one copy of any amendments to any of those documents.

(3) Any person may, during the usual business hours of the corporation, with the consent, in writing, of a director and upon payment of a reasonable fee, examine the records of the corporation referred to in paragraph (c) of subsection (1) of section 147 and make copies of those records or take extracts therefrom.

Shareholders' Lists

153. (1) Any person may, with the consent in writing of a director and upon payment of a reasonable fee and sending to a public corporation or its transfer agent the affidavit referred to in subsection (4), require the corporation or its transfer agent to furnish the person, within 15 days from the receipt of the affidavit, a list of shareholders of the corporation in this section referred to as the "basic list", made up to date not more than 30 days before the date of receipt of the affidavit, which must set out Basic list of shareholders.

- (a) the names of the shareholders of the corporation;
- (b) the number of shares held by each shareholder; and
- (c) the address of each shareholder as shown on the records of the corporation.

(2) When a person requiring a basic list from a corporation states in the affidavit referred to in subsection (4) that he requires supplemental lists from the corporation, he may, upon payment of a reasonable fee, require the corporation or its transfer agent to furnish him with supplemental lists of the shareholders, which must set out any changes from the basic list

- (a) in the names or addresses of the shareholders; and
- (b) in the number of shares held by each shareholder,

for each business day following the day to which the basic list is made up.

(3) When a supplemental list has been required from a corporation under subsection (2) by any person, the corporation, or its transfer agent, must 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) must state

- (a) the name and address of the applicant;
- (b) the name and address of the body corporate, if the applicant is a body corporate;
- (c) that the basic list and any supplemental list obtained pursuant to subsection (2) will not be used except as permitted under section 155.

(5) If the applicant is a body corporate, the affidavit must be made by a director or officer of the body corporate.

Options list. **154.** A person requiring under section 153 that a corporation supply a basic list or a supplemental list may also require the corporation to include in any such list the name and address of any known holder of an option or right to acquire shares of the corporation.

Restricted use of lists. **155.** A list of shareholders obtained under section 153 from a corporation shall not be used by any person except in connection with

- (a) an effort to influence the voting of shareholders of the corporation;

- (b) an offer to acquire shares in the corporation; or
- (c) any other matter relating to the affairs of the corporation.

PART VIII

TRANSFER OF SHARES AND DEBENTURES

156. (1) The shares or debentures of a corporation may be transferred by a written instrument of transfer signed by the transferor and naming the transferee. Transferring of shares.

(2) Where an instrument of transfer is prescribed in the by-laws of a corporation, that instrument must be used to transfer the shares or debentures of the corporation.

(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 corporation passes to a 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 corporation, or by or on behalf of a stock or securities exchange in Barbados.

(5) If the transferor concerned is not registered with the corporation 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 corporation, 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 corporation for registration, the corporation 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 corporation, and notwithstanding anything contained in any trust deed or debenture or any contract or instrument.

Restrictions
on transfers.

157. (1) No restriction or condition in a trust deed covering a debenture of a corporation, or in the debenture, limits the rights 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 corporation 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 corporation 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 corporation notwithstanding anything contained in the articles or by-laws of the corporation, and notwithstanding anything contained in any trust deed or

debenture, or any contract or instrument relating to the shares or debentures of the corporation.

158. (1) A corporation must issue a certification of the transfer of a share or debenture on the presentation to the corporation of a transfer that is signed by the holder of the share or debenture and accompanied by delivery to the corporation of the share or debenture. Duty to issue.

(2) A certification consists of a statement signed on behalf of the corporation 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 corporation.

(3) The certification by a corporation of any transfer of a share or debenture of the corporation is a representation by the corporation to any person acting on faith of the certification that there have been produced to the corporation such documents as on the face of them show a *prima facie* title to 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 corporation made fraudulently or negligently, the corporation is liable to compensate him for any loss he incurs in consequence of his so acting.

(5) A corporation that has issued a certification of a transfer of a share or debenture of the corporation is liable to compensate any person for loss that he incurs in consequence of the corporation 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 corporation if

(i) the person issuing the certification is a person authorised to issue certifications of transfers on the corporation's behalf, and

- (ii) the certification is signed by a person authorised to issue certifications of transfers on the corporation's behalf, or by any other officer or employee, either of the corporation 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 corporation's behalf.

Transfer
certificate.

159. (1) A corporation must, 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 its shares or debentures is presented to the corporation 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 corporation on which a notice is served requiring the corporation 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 corporation and any officer of the corporation 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 corporation and any officer of the corporation responsible for the default.

(3) For the purpose 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 corporation is for any reason entitled to refuse to register and does not register.

Registration.

160. (1) Notwithstanding anything in the articles or by-laws of a corporation or in any debenture, trust deed or other contract or instrument, the corporation shall not register a transfer of any share or debenture of the corporation unless a transfer in proper form and duly

signed by the transferor has been delivered to the corporation; but nothing in this section affects any duty of the corporation to register as a shareholder or debenture holder of the corporation any person to whom the ownership of any share or debenture of the corporation has been transmitted by operation of law.

(2) On the application of the transferor of any share or debenture of a corporation, the corporation must enter in its register of shareholders or debenture holders, as the case requires, the name of the transferee in the same manner and subject to the same condition as if the application for the entry had been made by the transferee.

(3) Notwithstanding anything in the articles or by-laws of a corporation or in any debenture, trust deed or other contract or instrument, a corporation must register the trustee in bankruptcy or the personal representative of a shareholder or debenture holder as a shareholder in respect of shares, as holder of the debentures of the bankrupt, or, as the case may be, the deceased person, in its register of shareholders or debenture holders, as the case may be, within 7 days after he produces to the corporation satisfactory evidence of his title and requests it to register him as a shareholder or debenture holder.

161. (1) A certificate issued by a corporation and signed on its behalf stating that any shares or debentures of the corporation are held by any person is *prima facie* proof of the title of that person to the shares or debentures. Effect of certificate.

(2) The registration of a person as a shareholder or debenture holder of a corporation, or the issue of a share certificate or debenture, constitutes a representation by the corporation that the person so registered, or the person named in the share certificate or debenture as entitled to the shares or debentures mentioned is entitled to the shares or debentures mentioned in the register or in the share certificate or debenture; and the corporation 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 corporation 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.

PART IX

TAKE-OVER BIDS

Definitions.

162. In this Part

- (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 shares 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 corporation" means a corporation 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 corporation to acquire all the shares of any class of issued shares of the offeree corporation, and includes every offer by an issuer to repurchase its own shares.

163. If within 120 days after the date of a take-over bid, the bid is accepted by the holders of not less than 90 per cent 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 Part, acquire the shares held by the dissenting offerees.

Offeror
rights.

164. 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

Notice to
dissenting
share-
holders.

- (a) that offerees who are holding 90 per cent 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 acquires 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 170 to 173 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 sub-paragraph (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 bid; and

- (e) that a dissenting offeree must send those shares of his to which the take-over bid relates to the offeree-corporation within 20 days after he receives the offeror's notice.

Adverse claims.

165. Concurrently with sending the offeror's notice under section 164, the offeror must send to the offeree-corporation a notice of adverse claim with respect to each share held by a dissenting offeree.

Delivery of certificates.

166. A dissenting offeree to whom an offeror's notice is sent under section 164 must, 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-corporation.

Payment for shares.

167. Within 20 days after the offeror sends an offeror's notice under section 164 the offeror must pay or transfer to the offeree-corporation 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 sub-paragraph (i) of paragraph (c) of section 164, to accept the take-over bid.

Money in trust.

168. The offeree-corporation holds in trust for the dissenting shareholders the money or other consideration it receives under section 167; and the offeree-corporation must deposit the money in a separate account in a bank and must place the other consideration in the custody of a bank.

Duty of offeree-corporation.

169. Within 30 days after the offeror sends an offeror's notice under section 164, the offeree-corporation must

- (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 sub-paragraph (i) of paragraph (c) of section 164, elects to accept the take-over bid, and
- (ii) sends his share certificates as required under section 166,

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 166 a notice stating that
 - (i) his shares have been cancelled,
 - (ii) the offeree-corporation 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-corporation will, subject to sections 170 to 172, send that money or other consideration to him forthwith after receiving his shares.

170. (1) If a dissenting offeree has, under sub-paragraph (ii) of paragraph (c) of section 164, 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 167, apply to the court to fix the fair value of the shares of that dissenting offeree. Application to court.

(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.

171. Upon an application under section 170

Joined parties.

- (a) all dissenting offerees referred to in sub-paragraph (ii) of paragraph (c) of section 164 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 must 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.

Powers and
order of
court.

172. (1) Upon an application to the court under section 170, the court may determine whether any other person is a dissenting offeree who should be joined as a party; and the court must 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 must 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.

173. In connection with proceedings under this Part, 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 168;
- (b) order that the money or other consideration be held in trust by a person other than the offeree-corporation;
- (c) allow to each dissenting offeree, from the date he sends or delivers his share certificates under section 166 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 the Consolidated Fund and subsection (3) of section 289 applies in respect of that payment.

PART X

FUNDAMENTAL CORPORATION CHANGES

Altering Articles

174. (1) Subject to sections 177 and 178, the articles of a corporation may, by special resolution, be amended

Funda-
mental
amendment
to articles.

- (a) to change its name;
- (b) to change any maximum number of shares that the corporation is authorised to issue;
- (c) to create new classes of shares;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) to authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

- (i) to revoke, diminish or enlarge any authority conferred under paragraphs (g) and (h);
- (j) to increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 67 and 73;
- (k) to add, change or remove restrictions on the transfer of shares; or
- (l) 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 corporation 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 corporation that restricts in whole or in part the powers of the directors to manage the business and affairs of the corporation may not be amended except with the consent of all the shareholders.

Validity of
transfer, etc.

175. An issue or a transfer of a share or act of a corporation is valid notwithstanding any failure to comply with the requirements of this Act.

Proposal to
amend
articles.

176. (1) Subject to subsection (2), a director or a shareholder of a corporation who is entitled to vote at a meeting of shareholders may, in accordance with section 111, make a proposal to amend the articles of the corporation.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered must set out the proposed amendment, and, where applicable, must state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 181; but failure to make that statement does not invalidate an amendment.

177. (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

Class vote
on proposal.

- (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 liquidation 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 corporation, 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
article.

178. (1) Subject to any revocation under subsection (2) of section 174, after an amendment has been adopted, articles of amendment in the prescribed form must 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.

Certificate
of
amendment.

179. (1) Upon receipt of articles of amendment from a corporation, the Registrar must issue to the corporation a certificate of amendment in accordance with section 302.

(2) An amendment to the articles of a corporation becomes effective on the date shown in the certificate issued by the Registrar in respect of that corporation; and the articles of the corporation 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 corporation or its directors or officers; or

(b) any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

180. (1) The directors of a corporation may at any time, and must, when reasonably so directed by the Registrar, restate the articles of incorporation of the corporation as amended. Restated articles.

(2) Restated articles of incorporation in the prescribed form must be sent to the Registrar.

(3) Upon receipt of restated articles of incorporation, the Registrar must issue a restated certificate of incorporation in accordance with section 302.

(4) Restated articles of incorporation are effective on the date shown in the restated certificate of incorporation, and supersede the original articles of incorporation and all amendments thereto.

Dissenters' Rights and Obligations

181. (1) Subject to section 194, a shareholder of any class of shares of a corporation may dissent if the corporation resolves to sell, lease or exchange all or substantially all its property under section 132. Dissent by shareholder.

(2) Subject to section 194, a shareholder of any class of shares of a corporation may dissent if the corporation is subject to an order of the court pursuant to an arrangement permitting the shareholders to dissent.

(3) The articles of a corporation that is not a public corporation may provide that a shareholder of any class or series of shares who is entitled to vote under section 177, may dissent if the corporation 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 190, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he dissents becomes effective, to be paid by the corporation 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 must send to the corporation, at or before any meeting of shareholders of the corporation at which a resolution referred to in subsection (1) or (3) is to be voted on, a written dissent from the resolution, unless the corporation 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 corporation has dissented pursuant to subsection (6) to a resolution referred to in subsection (1) or (3), the corporation must, within 10 days after the shareholders of the corporation 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.

182. (1) A dissenting shareholder must, within 20 days after he receives a notice under subsection (7) of section 181, 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 corporation 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 must, within 30 days after sending a notice under subsection (1), send the certificates representing the shares in respect of which he dissents to the corporation 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 corporation or its transfer agent must 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.

183. After sending a notice under section 182, 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 Suspension of rights.

- (a) the dissenting shareholder withdraws his notice before the corporation makes an offer under section 184;
- (b) the corporation fails to make an offer in accordance with section 184 and the dissenting shareholder withdraws his notice; or
- (c) the directors, under subsection (2) of section 174 revoke a resolution to amend the articles of the corporation,

in which case his rights as a shareholder are re-instated as of the date the notice mentioned in section 182 was sent.

184. (1) A corporation must, not later than 7 days after the day on which the action approved by the resolution is effective, or the day the corporation received the notice referred to in section 182, whichever is the later date, send to each dissenting shareholder who has sent such a notice Offer to pay for share.

- (a) a written offer to pay for his shares in an amount considered by the corporation to be the fair value of those shares, which must be accompanied with a statement showing how the fair value was determined; or
- (b) if section 190 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 must be on the same terms.

(3) Subject to section 190, a corporation must pay for the shares of a dissenting shareholder within 10 days after an offer made under subsection (1) has been accepted; but the offer lapses if the corporation does not receive an acceptance of the offer within 30 days after it has been made.

Application
to court.

185. (1) If a corporation fails to make an offer under subsection (1) of section 184, or if a dissenting shareholder fails to accept the offer made by the corporation, the corporation 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 corporation 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.

Joined
parties.

186. Upon application to the court under section 185

(a) all dissenting shareholders whose shares have not been purchased by the corporation are to be joined as parties and are bound by the decision of the court; and

(b) the corporation must 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.

Court
powers.

187. (1) Upon an application to the court under section 185, the court may determine whether any other person is a dissenting shareholder who should be joined as a party; and the court must then fix a fair value for the shares of all 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 must be made against the corporation in favour of each dissenting shareholder of the corporation and for the amount of the shares of the dissenting shareholder as fixed by the court.

188. The court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date the action approved by the resolution is effective until the date of payment by the corporation. Interest.

189. (1) If section 190 applies, the corporation must, within 10 days after the making of an order under subsection (3) of section 187, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares. Recourse of dissenting shareholder.

(2) If section 190 applies, a dissenting shareholder, by written notice delivered to the corporation within 30 days after receiving a notice under subsection (1)

- (a) may withdraw his notice of dissent, in which case the corporation 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 corporation entitled to be paid as soon as the corporation is lawfully able to do so, or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation, but in priority to the corporation's shareholders.

190. A corporation shall not make a payment to a dissenting shareholder under section 184 if there are reasonable grounds for believing Prohibition of payment.

- (a) the corporation is or would, after the payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

PART XI

CIVIL REMEDIES

191. In this Part

Definitions.

- (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 corporation;
 - (ii) a director or an officer or former director or officer of a corporation;
 - (iii) the Registrar; or
 - (iv) any other person who, in the discretion of the court, is a proper person to make an application under Parts I to XI.

Derivative Actions

Derivative
actions.

192. (1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a corporation, apply to the court for leave to bring an action in the name and on behalf of the corporation or any of its subsidiaries, or intervene in an action to which any such corporation or 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 corporation or its subsidiary of his intention to apply to the court under subsection (1) if the directors of the corporation 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 corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Court
powers.

193. In connection with an action brought or intervened in under section 192, 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 corporation or its subsidiary, instead of to the corporation; or
- (d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Restraining Oppression

194. (1) A complainant may apply to the court for an order under this section. Oppression restrained.

(2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result;
- (b) the business or affairs of the corporation 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 corporation 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 corporation, 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 corporation's affairs by amending its articles or by-laws;
- (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 corporation, subject to subsection (6), or any other person, to purchase shares or debentures of a holder thereof;
- (g) an order directing a corporation, 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 or debentures;
- (h) an order varying or setting aside a transaction or contract to which a corporation is a party, and compensating the corporation or any other party to the transaction or contract;
- (i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such form as the court may determine;
- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of a corporation under section 197;
- (l) an order liquidating and dissolving the corporation;
- (m) an order directing an investigation under Division B of Part XIV 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 corporation, 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 181 to dissent if an amendment to the articles is effected under this section.

(6) A corporation 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 corporation is unable or would, after that payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation'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 277.

195. (1) An application made or an action brought or intervened in under this Part or Parts I to XI 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 corporation or its subsidiary has been or might be approved by the shareholders of the corporation; but evidence of approval by the shareholders of the corporation or its subsidiary may be taken into account by the court in making an order under section 193, 194 or 277. Staying
action.

(2) An application made or an action brought or intervened in under this Part or Parts I to X 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.

196. In an application made or an action brought or intervened in under this Part or Parts I to X, the court may at any time order the corporation 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. Interim
costs.

Rectification
of records.

197. (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 corporation, a shareholder or debenture holder of the corporation, or any aggrieved person, may apply to the court for an order that the registers or records of the corporation be rectified.

(2) An applicant under this section must 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 corporation to be rectified;
- (b) an order restraining the corporation 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 corporation, whether the issue arises between 2 or more shareholders or debenture holders or alleged shareholders or alleged debenture holders, or between the corporation 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.

Other Remedial Actions

Directions
for
Registrar.

198. 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.

199. (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 must Refusal by Registrar.

- (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 200, the Registrar has refused to file the articles or document.

200. A person who feels aggrieved by a decision of the Registrar Appeal from 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 12 to 14;
- (c) to refuse to grant an exemption under section 140 and any regulations thereunder;
- (d) to dissolve a corporation under section 275,

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.

201. If a corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation does not comply with this Act, the regulations, articles or by-laws of the corporation, a complainant or creditor of the corporation may, Restraining order etc.

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 or by-laws, as the case may be.

Summary
application.

202. Where this Act states that a person may apply to the court, the application may be made in a summary manner by 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 XII

PROTECTION OF CREDITORS AND INVESTORS

Division A

TRUST DEEDS AND DEBENTURES

Definitions.

203. In this Part

- (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 corporation 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 corporation after its incorporation under this Act, under which the corporation issues debentures and in which a person is appointed as trustee for the holders of the debentures issued thereunder.

204. This Part 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. Application of Part.

Trustees

205. (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. Conflict of interest.

(2) 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 corporation issuing the debentures.

(3) Within 90 days after a trustee becomes aware that a material conflict of interest exists in his case, the trustee must

- (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 a 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.

206. (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 List of debenture holders.

- (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 on 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 must 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 must be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) must state

- (a) the name and address of the persons 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.

207. (1) An issuer or a guarantor of debentures issued or to be issued under a trust deed must, 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

Evidence of compliance.

- (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 must 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.

208. Evidence of compliance as required by section 207 must consist of

Contents of evidence.

- (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.

209. The evidence of compliance referred to in section 208 must include a statement by the person giving the evidence

Further evidence.

- (a) declaring that he has read and understands the conditions of the trust deed described in section 207;
- (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.

210. Upon the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed must 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.

211. At least once in each 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 must 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.

212. Within 30 days after a trustee under a trust deed becomes aware of an event of default thereunder, the trustee must 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.

213. (1) Debentures issued, pledged or deposited by a corporation 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 corporation 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 corporation then existing or thereafter incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

214. A trustee under a trust deed in exercising his powers and discharging his duties must Duty of care.

- (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.

215. Notwithstanding section 214 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. Reliance on statements.

216. 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 214. No exculpation.

217. (1) The trustee under a trust deed hold 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. Rights of trustees.

- (2) A debenture holder may
 - (a) sue the corporation 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 other debenture holders of the same class, or, if the action is brought against the corporation, 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 223; or
- (c) to consent to the substitution of debentures of a different class issued by the corporation or any other corporation or body corporate for the debentures of the debenture holders, or to consent to the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the corporation or any other body corporate.

Trust Deeds

Need for
trust deed.

218. (1) A public corporation must, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

(2) No trust deed may cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public corporation but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the corporation

- (a) order the corporation to execute a trust deed in respect of those debentures;
- (b) direct that a person nominated by the court be appointed a trustee of the trust deed; and
- (c) give such consequential directions as the court thinks fit regarding the contents of the trust deed and its execution by the trustee.

219. (1) Debentures belong to different classes if different rights attach to them in respect of Kinds of debentures.

- (a) the rate of interest or the dates for payment of interest;
- (b) the dates when, or the installments by which, the principal of the debentures will be repaid, unless the difference is solely that the class of debentures will be repaid during a stated period of time and particular debentures will be repaid at different dates during that period according to selections made by the corporation or by drawings, ballot or otherwise;
- (c) any right to subscribe for, or convert the debentures into other shares or other debentures of the corporation or any other body corporate; or
- (d) the powers of the debenture holders to realise any security interest.

(2) Debentures belong to different classes if they do not rank equally for payment when

- (a) any security interest is realised; or

(b) the corporation is liquidated,

that is to say, if, in those circumstances, the security interest or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

Cover of
trust deed.

220. A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the corporation under the trust deed, or is entitled by the trust deed to the benefit of any security interest, whether alone or together with other persons.

Contents of
trust deed.

221. (1) Every trust deed, whether required by section 218 or not, must state

- (a) the maximum sum that the corporation can raise by issuing debentures of the same class;
- (b) the maximum discount that can be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures can be made redeemable;
- (c) the nature of any assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a security interest has been, or will be, created in favour of any person other than the trustee for the benefit of the debenture holders equally, and, except where such an interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the corporation has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;

- (f) any prohibition or restriction on the power of the corporation to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (g) whether the corporation will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
- (h) the dates on which interest on the debentures issued under the trust deed will be paid, and the manner in which payment will be made;
- (i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid upon those shares, and the dates and terms on which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;
- (k) the circumstances in which the debenture holders will be entitled to realise any security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;
- (l) the power of the corporation and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the corporation or the trustee to call meetings of the debenture holders;

- (m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering trust deed being executed, the statements required by subsection (1) must be included in each debenture or in a note forming part of the same document, or endorsed thereon; and in applying that subsection, references therein to the trust deed are to be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) does not apply if

- (a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued, and
- (b) the rights of the debenture holder cannot be altered or abrogated without his consent.

Contents of
debentures.

222. (1) Every debenture that is covered by a trust deed must state either in the body of the debenture or in a note forming part of the same document or endorsed thereon

- (a) the matters required to be stated in a trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 221;
- (b) whether the trustee of the covering trust deed holds the security interest vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and, if so, which debenture holders; and
- (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering trust deed or in the debenture holders.

(2) A debenture issued by a corporation must state on its face in clearly legible print that it is unsecured if no security interest is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal and interest.

Realisation of Security

223. (1) Debenture holders are entitled to realise any security interest vested in them or in any other person for their benefit, if Equity realisation.

- (a) the corporation fails, within one month after it becomes due, to pay
 - (i) any instalment of interest,
 - (ii) the whole or part of the principal, or
 - (iii) any premium,owing under the debentures or the trust deed covering the debentures;
- (b) the corporation fails to fulfil any of the obligations imposed on it by the debentures or the trust deed;
- (c) any circumstances occur that by the terms of the debentures or trust deed entitled the holders of the debentures to realise their security interest; or
- (d) the corporation liquidated.

(2) Debenture holders whose debentures are secured by a general floating charge vested in themselves or the trustee of the covering trust deed or any other person are additionally entitled to realise their security interest, if

- (a) any creditor of the corporation issues a process of execution against any of its assets or commences proceedings for liquidation of the corporation by order of any court of competent jurisdiction;
- (b) the corporation ceases to pay its debts as they fall due;

- (c) the corporation ceases to carry on business;
 - (d) the corporation incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of
 - (i) debentures of the class held by the debenture holders who seek to enforce their security interest, and
 - (ii) debentures whose holders rank before them for payment of principal or interest; or
 - (e) any circumstances occur that entitle debenture holders who rank for payment of principal or interest in priority to the debentures secured by the general floating charge to realise their security interest.
- (3) At any time after a class of debenture holders become entitled to realise their security interest, a receiver of any assets subject to such security interest or in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed
- (a) by the trustee;
 - (b) by the holders of debentures in respect of which there is owing more than half of the total amount owing in respect of all the debentures of the same class; or
 - (c) by the court on the application of any trustee or debenture holder of the class concerned.
- (4) A receiver appointed pursuant to subsection (3), has, subject to any order made by the court, power
- (a) to take possession of the assets that are subject to the security interest and to sell those assets; and
 - (b) if the security interest extends to that property
 - (i) to collect debts owed to the corporation,
 - (ii) to enforce claims vested in the corporation,

- (iii) to compromise, settle and enter into arrangements in respect of claims by or against the corporation,
- (iv) to carry on the corporation's business with a view to selling it on the most favourable terms,
- (v) to grant or accept leases of land and licences in respect of patents, designs, copyright or trade, service or collective marks, and
- (vi) to recover capital unpaid on the corporation's issued shares.

(5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustee under the trust deed or on the debenture holders by the debentures or the trust deed; and any power or remedy that is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security interest is exercisable on the occurrence of any of the events specified in subsection (1), or, in the case of a general floating charge, in subsections (1) and (2); but a manager of the business or of any of the assets of a corporation may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) No provision in any instrument is valid that purports to exclude or restrict the remedies given by this section.

Division B

RECEIVERS AND RECEIVER-MANAGERS

224. (1) A person may not be appointed a receiver or receiver-manager of any assets of a corporation, and may not act as such a receiver or receiver-manager, if the person

Disqualified
receivers.

- (a) is a body corporate;
- (b) is an undischarged bankrupt; or

(c) is disqualified from being a trustee under a trust deed executed by the corporation, or would be so disqualified if a trust deed had been executed by the corporation.

(2) If a person who was appointed to be a receiver or receiver-manager becomes disqualified under subsection (1) or under any provision contained in a debenture or trust deed, another person may be appointed in his place by the persons who are entitled to make the appointment, or by the court; but a receivership is not terminated or interrupted by the occurrence of the disqualification.

Functions of receivers.

225. A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realise the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the court, he may not carry on the business of the corporation.

Functions of receiver-managers.

226 A receiver of a corporation may, if he is also appointed manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.

Directors' powers stopped.

227. When a receiver-manager of a corporation is appointed by the court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorised to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty under court direction.

228. A receiver or receiver-manager of a corporation appointed by the court must act in accordance with the directions of the court.

Duty under instrument.

229. A receiver or receiver-manager of a corporation appointed under an instrument must act in accordance with that instrument and any directions of the court made under section 231.

Duty of care.

230. A receiver or receiver-manager of a corporation appointed under an instrument must

(a) act honestly and in good faith; and

- (b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.

231. (1) Upon an application by a receiver or receiver-manager of a corporation, whether appointed by the court or under an instrument, or upon an application by an interested person, the court may make any order it thinks fit, including

Directions
by court.

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) an order determining the notice to be given to any person, or dispensing with notice to any person;
- (c) an order declaring the rights of persons before the court or otherwise, or directing any person to do, or abstain from doing, anything;
- (d) an order fixing the remuneration of the receiver or receiver-manager;
- (e) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed
- (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation,
- (ii) to relieve any such person from any default on such terms as the court thinks fit, and
- (iii) to confirm any act of the receiver or receiver-manager; and
- (f) an order giving direction on any matter relating to the duties of the receiver or receiver-manager.

232. A receiver or receiver-manager of a corporation must

Duties of
receivers.

- (a) immediately give notice of his appointment to the Registrar, and of his discharge;

- (b) take into his custody and control the property of the corporation in accordance with the court order or instrument under which he is appointed;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his control;
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration, which must be available during usual business hours for inspection by the directors of the corporation;
- (f) prepare financial statements of his administration at such intervals and in such form as are prescribed;
- (g) upon completion of his duties, render a final account of his administration, in the form adopted for interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within 15 days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

Liability of
receivers,
etc.

233. (1) A receiver of assets of a corporation appointed under subsection (3) of section 223 or under the powers contained in any instrument

- (a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and
- (b) is entitled in respect of that liability to an indemnity out of the assets of which he was appointed to be receiver,

but nothing in this subsection limits any rights to an indemnity that he would have, apart from this subsection, or limits his liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(2) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it

- (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him that, if the appointment had been valid, would have been properly done or omitted to be done; and
- (b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

234. Where a receiver or receiver-manager of any assets of a corporation has been appointed for benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the corporation or the receiver, being a document on or in which the name of the corporation appears, must contain a notice that a receiver or a receiver-manager has been appointed.

Notice of receivership.

235. (1) Where a receiver is appointed on behalf of the holders of any debentures of a corporation that are secured by a floating charge or where possession is taken, by or on behalf of any debenture holders of a corporation, of any property of the corporation that is subject to a floating charge, then, if the corporation is not at the time in course of being liquidated, the debts that in every liquidation are under Part XIII and the regulations relating to preferential payments to be paid in order of priority to all other debts must be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the corporation secured by the floating charge.

Floating charges priorities.

(2) Any period of time mentioned in the provisions referred to in subsection (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the corporation that are available for the payment of general creditors.

Statement
of affairs.

236. (1) Where a receiver of the whole, or substantially the whole, of the assets of a corporation, in this section and section 237 referred to as the "receiver", is appointed under subsection (3) of section 223, or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the corporation secured by a general floating charge, then, subject to this section and section 237

- (a) the receiver shall forthwith send notice to the corporation of his appointment;
- (b) within 14 days after receipt of the notice by the corporation, or such longer period as may be allowed by the receiver, there shall be made out by the corporation and submitted to the receiver a statement in accordance with section 237 as to the affairs of the corporation;
- (c) the receiver shall, within 2 months after receipt of the statement, send
 - (i) to the Registrar, and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he sees fit to make thereon, and, in the case of the Registrar, also a summary of the statement and of his comments, if any, thereon;
 - (ii) to the corporation, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect;

- (iii) to the trustee of the trust deed, a copy of the statement and those comments, if any; and
 - (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he was appointed, a copy of that summary.
- (2) The receiver shall
- (a) within 2 months or such longer period as the court may allow, after the expiration of the period of 12 months from the date of his appointment, and after every subsequent period of 12 months; and
 - (b) within 2 months or such longer period as the court may allow after he ceases to act as receiver of the assets of the corporation,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

- (3) The abstract must show
- (a) the receiver's receipts and payments during the period of 12 months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing to act; and
 - (b) the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.
- (4) Subsection (1) does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that subsection applies to a receiver who dies or ceases to act before the subsection has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver include, subject to subsection (5), references to his successor and to any continuing receiver.

(5) If the corporation is being liquidated, this section and section 237 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(6) Nothing in subsection (2) affects the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times that, he is required to do so apart from that subsection.

Contents of
statement.

237. (1) The statement as to the affairs of a corporation required by section 236 to be submitted to the receiver or his successor must show, as at the date of the receiver's appointment,

- (a) the particulars of the corporation's assets, debts and liabilities;
- (b) the names, addresses and occupations of the corporation's creditors;
- (c) the security interests held by the corporation's creditors respectively;
- (d) the dates when the security interests were respectively created; and
- (e) such further or other information as is prescribed.

(2) The state of affairs of the corporation must be submitted by, and be verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the corporation at that date, or by such of the persons, hereafter in this sub-section mentioned, as the receiver or his successor, subject to the direction of the Registrar, may require to submit and verify the statement, namely: persons who

- (a) are or have been officers of the corporation;
- (b) have taken part in the formation of the corporation at any time within one year before the date of the receiver's appointment;

- (c) are in the employment of the corporation, or have been in the employment of the corporation within that year, and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are, or have been within that year officers of, or in the employment of, an affiliated corporation.

(3) Any person making or verifying the statement of affairs of a corporation, or any part of it, must be allowed and paid by the receiver or his successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his successor considers reasonable, subject to an appeal to the court.

Division C

PROSPECTUSES

Interpretation

238. In this Part

Definitions.

- (a) "issue" includes circulate or distribute;
- (b) "notice" includes circular or advertisement;
- (c) "prospectus" includes, in relation to any corporation, any notice, prospectus, or other document that
 - (i) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or
 - (ii) offers to the public for subscription or purchase, directly or through other persons,

any shares or debentures of the corporation or any units of any such shares or debentures of the corporation.

Application
of Part.

239. This Part applies whether any shares or debentures of a corporation are offered to the public on, or with reference to, the promotion of a corporation, or at any time after the corporation has come into existence.

Prospectus Requirements

Prohibition
re public
issue.

240. (1) Subject to subsection (2), no person shall issue any form of application for shares or debentures unless

- (a) a prospectus, as required by this Part, has been registered with the Registrar, and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in Barbados where a copy of the prospectus can be obtained.

(2) Subsection (1) does not apply if the form of application referred to is issued in connection with shares or debentures that are not offered to the public or intended for the public.

Contents of
prospectus.

241. The following requirements apply to a prospectus

- (a) the prospectus must be dated; and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;
- (b) one copy of the prospectus must be lodged with the Registrar, and the prospectus must set out that a copy of the prospectus has been so lodged, and immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;
- (c) the prospectus must contain a statement that no shares and debentures, or either, are to be allotted on the basis of the prospectus later than 3 months after the date of issue of the prospectus;

- (d) the prospectus must, if it contains any statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus;
- (e) the prospectus must disclose any commission payable by virtue of section 50; and
- (f) the prospectus must contain such other matters as are prescribed.

242 A prospectus must not contain the name of any person as a trustee for holders of debentures or as an auditor, a banker, an attorney-at-law, a stock broker or shareholder, of the corporation or proposed corporation, or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in subsection (2) of section 305, has been lodged with the Registrar. Professional names.

243. A condition is void that No waivers.

- (a) purports to require or bind an applicant for shares or debentures of a corporation to waive compliance with any requirement of this Part; or
- (b) purports to affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

244. (1) Subject to this section, no person

- (a) shall issue any notice that offers, for subscription or purchase, shares or debentures of a corporation, or invites subscription for, or purchase of, any such shares or debentures; Certain notice required.

- (b) shall issue any notice that calls attention to
 - (i) an offer, or intended offer, for subscription or purchase, of shares or debentures of a corporation;
 - (ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures; or
 - (iii) a prospectus.
- (2) This section does not apply to
 - (a) a notice that relates to an offer or invitation not made or issued to the public, directly or indirectly;
 - (b) a registered prospectus within the meaning of this Part;
 - (c) a notice
 - (i) that calls attention to a registered prospectus,
 - (ii) that states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus; and
 - (iii) that contains no other information except that permitted pursuant to subsection (3); or
 - (d) a notice
 - (i) that accompanies a notice referred to in paragraph (c) or would, but for the inclusion therein of a statement referred to in sub-paragraph (iii) or (iv) of this paragraph, be a notice so referred to,
 - (ii) that is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business,

-
- (iii) that contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and
- (iv) that, if the person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter sub-underwriter, as the case may be.
- (3) All or any of the following information is permitted for the purposes of sub-paragraph (iii) of paragraph (c) of subsection (2)
- (a) the number and description of the shares or debentures of the corporation to which the prospectus relates;
- (b) the name of the corporation, the date of its incorporation and the number of the corporation's issued shares and the amount paid on its issued shares;
- (c) the names, addresses and occupations of the directors of the corporation;
- (d) the names and addresses of the brokers or underwriters, if any, to the issue of shares or debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
- (e) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;
- (f) the particulars of the period during which the offer is effective;
- (g) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.
- (4) This section applies to any notice issued in Barbados by newspapers, or by radio or television broadcasting, or by cinematograph or any other means.

Respon-
sibility re:
certificate.

245. (1) Where a person issues a notice in contravention of section 244 and before doing so obtains a certificate that

- (a) is signed by 2 directors of the corporation or 2 directors of the proposed corporation to which, or to the shares or debentures of which, the notice relates,
- (b) specifies, the names of those directors and of that corporation or of those proposed directors of that proposed corporation, and
- (c) is to the effect that, by the operation of subsection (2) of section 244, this section does not apply to the notice,

each person who signed the certificate is deemed to have issued the notice, and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in subsection (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

Evidence.

246. In proceedings for a contravention of section 244 or 245, a certificate that purports to be a certificate under section 245 is *prima facie* proof

- (a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the corporation so named, or proposed directors of the proposed corporation so named, as the case may be;
- (b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and
- (c) that publication of the notice to which the certificate relates was authorised by those persons.

Registration of Prospectus

247. (1) No person shall issue a prospectus unless a copy thereof has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was effected.

Registration
of prospec-
tus.

- (2) The Registrar may not register a copy of a prospectus unless
- (a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the corporation, or by his agent authorised in writing;
 - (b) the prospectus appears to comply with the requirements of this Act;
 - (c) there are also lodged with the Registrar copies of any consents required by section 249 to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of any such contract that is not reduced to writing, a memorandum giving full particulars of the contract; and
 - (d) the Registrar is of the opinion that the prospectus does not contain any statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar refuses to register a prospectus, he must give notice of that fact to the person who lodged the prospectus, and give in the notice the reasons for his refusal; and if the Registrar registers a prospectus he must give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effected.

(4) A person who lodged a prospectus with the Registrar may, within 30 days after he is notified of a refusal to register pursuant to subsection (3), require in writing that the Registrar refer the matter to the court; and the Registrar must then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under subsection (4), the court, after hearing the person who lodged the prospectus, and, if the court so wishes, the Registrar, may order the Registrar to register the prospectus, or it may uphold his decision to refuse registration.

(6) On a hearing under subsection (5), a party may be heard in person or by an attorney-at-law.

Other Requirements

Prospectus
presumed.

248. (1) When a corporation allots or agrees to allot to any person shares or debentures of the corporation with a view to all or any of those shares or debentures being offered for sale to the public, the document by which the offer for sale to the public is made is for all purposes deemed to be a prospectus issued by the corporation; and all enactments and rules of law as to the contents of prospectuses or otherwise relating to prospectuses, apply and have effect accordingly as if the shares or debentures had been offered to the public, and as if the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability, if any, of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a corporation was made with a view to the shares or debentures being offered for sale to the public, if

- (a) the offer for sale of the shares or debentures, or of any of them, to the public was made within 6 months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares or debentures had not been so received.

(3) The requirements of this Part as to the prospectuses are to have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Part, the document making the offer must set out

- (a) the net amount of the consideration received, or to be received, by the corporation in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been, or are to be, allotted can be inspected.

(5) Where an offer to which this section relates is made by a corporation, it is sufficient if the document making the offer is signed on behalf of the corporation by 2 directors of the corporation; and a director may sign by his agent authorised in writing to do so.

249. (1) A prospectus that invites subscription for, or the purchase of shares or debentures of a corporation, and that includes a statement purporting to be made by an expert shall not be issued unless

Expert's
consent.

- (a) that expert has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

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

Liability for Prospectus Claims

Liability on
prospectus.

250. (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase, any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely

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

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of the name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker or sharebroker may not, for that reason alone, be taken as an authorisation by him of the issue of the prospectus.

(3) No person is liable under subsection (1)

- (a) who, having consented to become a director of the corporation, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;

- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issue;
 - (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or
 - (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.
- (4) No person is liable under subsection (1),
- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement was competent to make it, and had given his consent as required under section 249 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or
 - (b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or copy of, or extract from the document.

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 249, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 249 as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not liable

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

(7) When

- (a) a prospectus contains the name of a person as a director of the corporation, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to its issue; or
- (b) the consent of a person is required under section 249 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

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

Subscription List and Minimum Subscription

251. (1) No allotment may be made of any shares or debentures of a corporation in pursuance of a prospectus, and no proceedings may be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after that on which the prospectus is first issued, or any such later time as is specified in the prospectus; and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

(2) An application for shares or debentures of a corporation made in pursuance of a prospectus is not revocable until after the expiration of the fifth day from the time of the opening of the subscription lists, or the giving before the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) Although an allotment made in contravention of this section is void, it does not affect any allotment of the same shares or debentures later made to the same applicant.

(4) In reckoning for the purposes of this section the fifth day from another day, any intervening day that is a public holiday must be disregarded; and if the fifth day as so reckoned falls on a Saturday, Sunday, or public holiday, the first day thereafter that is not a Saturday, Sunday or public holiday is deemed to be the fifth day for those purposes.

Minimum
subscription.

252. (1) Unless all the shares or debentures offered for subscription by a prospectus issued to the public are underwritten, the prospectus must state the minimum amount of money required to be raised by the corporation by issuing the shares or debentures, in this Part, referred to as the "minimum subscription".

(2) No allotment may be made of any shares or debentures of a corporation that are offered to the public unless

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares or debentures has been received by the corporation,

and, if a cheque for the sum payable has been received by the corporation, the sum is deemed not to have been received by the corporation until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in subsection (2) have not been complied with on the expiration of 40 days after the first issue of the prospectus, all moneys received from the applicants for any shares or debentures must be forthwith repaid to them without interest, and, if any such moneys are not so repaid within 48 days after the issue of the prospectus, the directors of the corporation are, subject to subsection (4), jointly and severally liable to repay that money with interest at the rate of 6 per cent per annum from the expiration of the 48 days.

(4) A director is not liable to repay moneys under subsection (3) if the default in any repayment of moneys was not due to any default or negligence on his part.

(5) A condition is void that purports to require or bind any applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

253. All application money and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public must, until the allotment of the shares or debentures, be held by the corporation, or, in the case of an intended corporation, by the persons named in the prospectus as proposed directors and by the incorporators, upon trust for the applicant; but there is no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank or person acts in good faith.

Escrow of
subscription
money.

Remedial Actions

254. (1) A shareholder or a debenture holder may bring, against a corporation that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debenture holders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if

Rescission of
contract.

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act to be contained in it.

(2) In this section

- (a) "debenture holder" means a holder of any of the debentures allotted under the prospectus, whether the original allottee or a person deriving title under him;
- (b) "shareholder" means a holder of any of the shares allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section, a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription; and a statement, report or account is omitted from a prospectus if it is

omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the shares or debentures he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(5) No action may be brought under this section more than 2 years after the first issue of the prospectus under which shares or debentures were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) If judgment is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff, or the person under whom he derives title, or to other persons, is void; and judgment must be entered in favour of all such persons for the payment by the corporation to them severally of the amount paid in respect of the shares or debentures that they respectively hold; but if any shareholder or debenture holder at the date judgment is so entered signifies to the corporation in writing, whether before or after the entry of judgment, that he waives his right to rescind the allotment of shares or debentures that he holds, he is deemed not to be included among the persons in whose favour judgment is entered.

(7) The operation of this section is not affected by the corporation's being liquidated or ceasing to pay its debts as they fall due; and in the liquidation of the corporation a repayment due under subsection (6) must be treated as a debt of the corporation payable immediately before the repayment of the shares or debentures of the class in question, that is to say

- (a) in the case of a repayment in respect of shares, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends, or any premiums in respect of those shares, but after the payment of all debts of the corporation and the satisfaction of all claims in respect of prior ranking classes of shares; and

- (b) in the case of a repayment in respect of debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the corporation that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.
- (8) Subject to subsection (9), it is a defence to an action under this section for the corporation to prove that
- (a) the plaintiff was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.
- (9) An action may not be dismissed if there are several plaintiffs, when the corporation proves that it has a defence under subsection (8) against each of them; and in any case in which the corporation proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action, substitute some other shareholder or debenture holder of the same class as plaintiff.
- (10) If a corporation would have a defence under subsection (8) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the corporation may bring an action against the allottee for an indemnity against any sum that the court orders it to pay to the plaintiff in the action.

(11) Subsections (8) and (10) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgment against the corporation under subsection (6)

- (a) with the substitution in subsection (8) of references to the shareholder or debenture holder for references to the plaintiff; and
- (b) with the substitution in subsections (8) and (10) of references to a right for the corporation to have the judgment set aside in respect of the shares or debentures for references to a defence to the action.

(12) This section applies to shares and debentures allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(13) This section applies to shares or debentures issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or debentures, whether with or without the payment of cash by or to the corporation, as though the issue price of the shares or debentures offered for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash, if any, to be paid by the corporation.

(14) The rights conferred on shareholders and debenture holders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the corporation at common law for deceit or for false statements made negligently; and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the corporation.

Time limit
on
allotment.

255. No allotment may be made, on the basis of a prospectus, of any shares or debentures of a corporation that are offered to the public later than 3 months after the issue of the prospectus.

Statements in Lieu of Prospectus

256. A public corporation that does not issue a prospectus on, or with reference to, its formation may not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Part. Restriction on allotment.

257. (1) To comply with the requirement of this Part, a statement in lieu of prospectus lodged by or on behalf of a corporation Statements in lieu of prospectus.

- (a) must be signed by every person who is named therein as a director or a proposed director of the corporation, or by his agent authorised in writing;
- (b) must disclose any commission payable by virtue of section 50; and
- (c) must contain such matters as are prescribed.

(2) The Registrar may not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Subsections (3) to (6) of section 280 apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of or refusal to register a prospectus.

Division D

INSIDER TRADING

258. In this Division, "insider" means, in respect of a corporation "Insider" defined.

- (a) a director or officer of the corporation;
- (b) a corporation that purchases or otherwise acquires shares issued by it or any of its affiliates;

- (c) a person who beneficially owns more than 10 per cent of the shares of the corporation, or who exercises control or direction over more than 10 per cent of the votes attached to shares of the corporation;
- (d) an associate or affiliate of a person mentioned in paragraphs (a) to (c); and
- (e) a person, whether or not he is employed by the corporation, who
 - (i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and
 - (ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph.

Presumed
insider.

259. (1) For the purposes of this Division

- (a) a director or officer of a body corporate that is an insider of a corporation is an insider of the corporation;
 - (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding corporation.
- (2) For the purposes of this Part
- (a) if a body corporate becomes an insider of a corporation, or enters into a business combination with a corporation, a director or officer of the body corporate is presumed to have been an insider of the corporation for the previous 6 months or for such shorter period as he was a director or an officer of the body corporate; and
 - (b) if a corporation becomes an insider of a body corporate, or enters into a business combination with a body corporate, a director or officer of the body corporate is presumed to have been an insider of the corporation for the previous 6 months, or for such shorter period as he was a director or an officer of the body corporate.

(3) In subsection (2), "business combination" means an acquisition of all or substantially all the property of one corporation by another.

260. An insider who, in connection with a transaction in a share of the corporation or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the share Liability of insider.

- (a) is liable to compensate any person for any direct loss incurred by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known, to that person at the time of the transaction, and
- (b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

261. An action to enforce a right created by section 260 may not be commenced except within 2 years after the discovery of the facts that gave rise to the cause of action. Time limit on action.

PART XIII

WINDING-UP

Division A

INSOLVENCY

262. (1) A receiving order under the *Bankruptcy Act* may be made against a corporation. Bankruptcy Act applies. Cap. 303.

(2) For the purposes of the *Bankruptcy Act*, "debtor" in subsection (3) of section 3 of that Act includes a corporation.

(3) A corporation commits an act of bankruptcy for the purposes of the *Bankruptcy Act* in any of the cases set out in paragraphs (a), (b), (c), (e), (f), (g), (h) or (i) of subsection (1) of section 3 of that Act.

- Receiving order. **263.** Where the court makes a receiving order under the *Bankruptcy Act* against a corporation, any provision of that Act that imposes a duty or obligation on the corporation has effect as if it imposed additionally that duty or obligation on each person who was a director of the corporation at the date of the presentation of the petition in bankruptcy; and that Act must be construed and applied accordingly.
- Bankruptcy. **264.** When a corporation is adjudged bankrupt under the *Bankruptcy Act*, the court may at any time thereafter make such order in respect of the dissolution of the corporation as it thinks fit.
- Adapting *Bankruptcy Act*. **265.** Such other adaptation or modification of the provisions of the *Bankruptcy Act* as are required for the application of that Act to corporations pursuant to this Part may be made by regulation under section 325.

Division B

LIQUIDATION FOR REASONS OTHER
THAN INSOLVENCY

- Application of this Part. Cap. 303. **266.** This Part does not apply to a corporation that is insolvent within the meaning of the *Bankruptcy Act*, or that is bankrupt within the meaning of that Act.
- Dissolution by resolution. **267.** A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors.
- No property. **268.** A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders, or, if it has issued more than one class of shares, by special resolutions of the holders of each class, whether or not they are otherwise entitled to vote.
- Effect of articles of dissolution. **269.** (1) Articles of dissolution in the prescribed form must be sent to the Registrar in respect of a corporation described in section 267 or 268.

(2) Upon receipt of articles of dissolution under subsection (1) for a corporation, the Registrar must issue a certificate of dissolution in accordance with section 302.

(3) The corporation referred to in subsection (2) ceases to exist on the date shown in its certificate of dissolution.

270. (1) The directors of a corporation, or, in accordance with section 111, a shareholder who is entitled to vote at a meeting of the corporation, may make a proposal for the voluntary liquidation of the corporation. Proposing liquidation.

(2) Notice of any meeting of shareholders of a corporation at which a voluntary liquidation and dissolution of the corporation is to be proposed must set out the terms of the liquidation and dissolution.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders, or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class, whether or not they are otherwise entitled to vote.

271. (1) A statement of intent to dissolve a corporation must be sent to the Registrar in the prescribed form. Intent to dissolve.

(2) Upon receipt of a statement of intent to dissolve a corporation, the Registrar must, in accordance with section 302 issue a certificate of intent to dissolve.

(3) When a certificate of intent to dissolve a corporation is issued by the Registrar, the corporation shall cease to carry on business except to the extent necessary for its liquidation; but its corporate existence continues until the Registrar issues a certificate of dissolution of the corporation.

(4) After the issue of a certificate of intent to dissolve it, the corporation shall

(a) immediately cause notice of its intent to dissolve to be sent to each known creditor of the corporation;

- (b) forthwith publish, in the *Gazette* and once in a newspaper published or distributed in Barbados, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the corporation is registered or has a place of business at the time it sent the statement of intent to dissolve to the Registrar;
- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations, and to do all other acts required to liquidate its business; and
- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Supervised
liquidation.

272. (1) The Registrar or any interested person may, at any time during the liquidation of a corporation, apply to the court for an order that the liquidation be continued under the supervision of the court as provided in this Part; and upon the application the court may so order and make any further order it thinks fit.

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

Revocation
of intent.

273. (1) At any time after the issue of a certificate of intent to dissolve a corporation, and before the issue of a certificate of its dissolution, a certificate of intent to dissolve may be revoked by sending to the Registrar, in the prescribed form, a statement of revocation of intent to dissolve the corporation, if the revocation is approved in the same manner as the resolution was approved under subsection (3) of section 270.

(2) Upon the receipt of a statement of revocation of an intent to dissolve a corporation, the Registrar must, in accordance with section 302, issue a certificate of revocation of intent to dissolve the corporation.

(3) On the date shown in the certificate of revocation of intent to dissolve a corporation, the revocation is effective and the corporation may continue to carry on its business.

274. (1) If a certificate of intent to dissolve a corporation has not been revoked and the corporation has complied with subsection (4) of section 271, the corporation must prepare articles of dissolution. Right to dissolve.

(2) The articles of dissolution in the prescribed form must be sent to the Registrar.

(3) Upon receipt under this section of the articles of dissolution of a corporation in the prescribed form the Registrar must, in accordance with section 302, issue a certificate of dissolution of the corporation.

(4) The corporation ceases to exist on the date shown in its certificate of dissolution.

275. (1) Subject to subsections (2) and (3), where a corporation Registrar's dissolution.

- (a) has not commenced business within 3 years after the date shown in its certificate of incorporation;
- (b) has not carried on its business for 3 consecutive years; or
- (c) has not had its name restored to the register within 2 years after the date on which it was struck off under section 310,

the Registrar may dissolve the corporation by issuing a certificate of dissolution under this section, or he may apply to the court for an order dissolving the corporation, in which case section 280 applies.

(2) The Registrar must not dissolve a corporation under this section until he has

- (a) given to the corporation 120 days' notice of his decision to dissolve the corporation;
- (b) published in the *Gazette* notice of his decision to dissolve the corporation.

(3) Unless cause to the contrary has been shown, or an order has been made by the court under section 280, the Registrar may, after the expiration of the period referred to in subsection (2), issue in the prescribed form, a certificate of dissolution of the corporation.

(4) The corporation ceases to exist on the date shown in its certificate of dissolution.

Court
dissolution.

276. (1) The Registrar or any interested person may apply to the court for an order dissolving a corporation, if the corporation

(a) has contravened section 18 or 152; or

(b) has procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the Registrar, must 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 this section or section 275, the court may order that the corporation be dissolved, or that the corporation be liquidated and dissolved under the supervision of the court; and the court may make any other order it thinks fit.

(4) Upon receipt of an order under this section, section 275 or section 277, the Registrar must

(a) if the order is to dissolve the corporation, issue in the prescribed form a certificate of its dissolution; or

(b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue, in the prescribed form, a certificate of intent to dissolve the corporation, and publish a notice of that intent in the *Gazette*.

(5) The corporation ceases to exist on the date shown in its certificate of dissolution.

277. (1) The court may order the liquidation and dissolution of a corporation upon the application of a shareholder Further grounds.

- (a) if the court is satisfied that, in respect of a corporation
- (i) any act or omission of the corporation effects a result,
 - (ii) the business or affairs of the corporation are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the corporation are or have been exercised in a manner,
- that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of any shareholder, debenture holder, creditor, director or officer; or
- (b) if the court is satisfied that it is just and equitable that the corporation be liquidated and dissolved.

(2) Upon an application under this section, the court may make such order as it thinks fit.

(3) Sections 195 and 196 apply to an application under this section.

278. (1) An application to the court to supervise a voluntary liquidation and dissolution under section 272 must state the reasons the court should supervise the liquidation and dissolution; and the reasons must be verified by the affidavit of the applicant. Supervision of court.

(2) If the court makes an order applied for under section 272, the liquidation and dissolution of the corporation must be continued under the supervision of the court in accordance with this Act.

279. (1) An application to the court under section 277 must state the reasons the corporation should be liquidated and dissolved; and the reasons must be verified by the affidavit of the applicant. Court dissolution.

(2) Upon an application under section 277, the court may make an order requiring the corporation and any person having an interest in the corporation or claim against it to show cause, at a time and place specified in the order, which must not be less than 4 weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) Upon an application under section 272 to supervise a voluntary liquidation and dissolution of a corporation, the court may order the directors and officers of the corporation to furnish to the court all material information known to, or reasonably ascertainable by, them, including

- (a) the financial statements of the corporation;
 - (b) the name and address of each shareholder of the corporation; and
 - (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.
- (4) A copy of an order made under subsection (2) must
- (a) be published, in a newspaper published or distributed in Barbados, as directed in the order, at least once in each week before the time appointed for the hearing; and
 - (b) be served upon the Registrar and each person named in the order.

(5) Publication and service of an order under this section must be effected by the corporation or by such other person and in such manner as the court may order.

Court
powers.

280. In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including

- (a) an order to liquidate;

- (b) an order appointing a liquidator, with or without security, fixing his remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to an interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claim made against the corporation;
- (f) an order, at any stage of the proceedings, restraining the directors and officers of the corporation from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation except as permitted by the court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder of the corporation
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of amounts for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;
- (i) an order disposing of, or destroying the documents and records of the corporation;
- (j) upon the application of a creditor, the inspector or the liquidator, an order giving directions on any matter arising in the liquidation;

- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit, and confirming any act of the liquidator;
- (l) subject to section 285, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) upon the application of any director, officer, shareholder or debenture holder, creditor or the liquidator
 - (i) an order staying the liquidation on such terms and conditions as the court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property; and
- (o) after the liquidator has rendered his final accounts to the court, an order dissolving the corporation.

Cessation
of business.

281. (1) Where a court makes an order for the liquidation of a corporation, then, from the date stated in the order

- (a) the corporation shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
 - (b) the powers of the directors and shareholders cease and are vested in the liquidator, except as specifically authorised by the court.
- (2) The liquidator may delegate any of the powers vested in him by paragraph (b) of subsection (1) to the directors or shareholders.

282. (1) When making an order for the liquidation of a corporation, or at any time thereafter, the court may appoint any person, including a director, officer or shareholder of the corporation, as liquidator of the corporation. Appointment
of liquidator.

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

283. A liquidator must

Duties of
liquidator.

- (a) forthwith after his appointment, give notice of his appointment to the Registrar and to each claimant and creditor of the corporation known to the liquidator;
- (b) forthwith give, by publication in the *Gazette* and by insertion once a week for 2 consecutive weeks in a newspaper published or distributed in Barbados, notice
 - (i) requiring any person indebted to the corporation to render an account and pay to the liquidator at the time and place specified any amount owing,
 - (ii) requiring any person possessing property of the corporation to deliver it to the liquidator at the time and place specified, and
 - (iii) requiring any person having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice,

and the liquidator must take reasonable steps to give notice of his appointment in every jurisdiction where the corporation is registered or has a place of business, and to require persons described in sub-paragraphs (i) to (iii) to take similar action;

- (c) take into his custody and control the property of the corporation;

- (d) open and maintain a trust account for the moneys of the corporation received and paid out by him;
- (e) keep accounts of the moneys of the corporation received and paid out by him;
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;
- (g) if at any time the liquidator determines that the corporation is unable to pay, or adequately provide for the discharge of its obligations, apply to the court for directions;
- (h) deliver to the court and to the Registrar, at least once in every 12 month period after his appointment, or more often as the court may require, financial statements of the corporation in such form as the liquidator may think proper, or as the court may require; and
- (i) after his final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

Power of liquidator.

284. (1) A liquidator may

- (a) retain attorneys-at-law, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;
- (c) carry on the business of the corporation as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the corporation;
- (e) do all acts and execute any documents in the name and on behalf of the corporation;

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- (f) borrow money on the security of the property of the corporation;
- (g) settle or compromise any claims by or against the corporation;
- (h) make financial provision in respect of the custody of the documents and records of the corporation after its dissolution; and
- (i) do all other things necessary for the liquidation of the corporation and the distribution of its property.
- (2) A liquidator incurs no liability as liquidator if he relies in good faith upon
- (a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation; or
- (b) an opinion, a report or a statement of an attorney-at-law, accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.
- (3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order, and to be examined.
- (4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore the property or pay compensation to the liquidator.
- (5) A liquidator must pay the costs of liquidation out of the property of the corporation and must pay or make adequate provision for all claims against the corporation.

Final
accounts.

285. (1) Within one year after his appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator must apply to the court

- (a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or
- (b) for an extension of time, setting out the reasons therefor.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(3) A liquidator must give to

- (a) the Registrar;
- (b) each inspector appointed under section 280;
- (c) each shareholder; and
- (d) any person who provided a security or fidelity bond for the liquidator,

notice of the liquidator's intention to make application under subsection (1); and he must publish a notice thereof in a newspaper published or distributed in Barbados, or as otherwise directed by the court.

(4) If the court approves the final accounts rendered by a liquidator, the court must make an order

- (a) directing the Registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the corporation; and
- (c) subject to subsection (5), discharging the liquidator.

(5) The liquidator must forthwith send a certified copy of the order referred to in subsection (4) to the Registrar.

(6) Upon receipt of the order referred to in subsection (4), the Registrar must issue a certificate of dissolution in accordance with section 302.

(7) The corporation ceases to exist on the date shown in its certificate of dissolution.

286. (1) If, in the course of liquidation of a corporation, the shareholders resolve or the liquidator proposes Money distribution.

- (a) to exchange all or substantially all the property of the corporation for shares or debentures of another body corporate for distribution to the shareholders; or
- (b) to distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

(2) Upon an application under subsection (1), the court may order

- (a) that all the property of the corporation be converted into, and distributed in, money, or
- (b) that the claims of any shareholder applying under this section be satisfied by a distribution in money, in which case section 187 applies.

287. A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for 6 years following the date of the corporation's dissolution, or until the expiry of such other shorter period as may be ordered under subsection (4) of section 285. Record custody.

288. (1) In this section, "shareholder" includes the legal representatives of a shareholder. Continuation of actions.

- (2) Notwithstanding the dissolution of a corporation under this Act
- (a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;
 - (b) a civil, criminal or administrative action or proceeding may be brought against the corporation within 2 years after its dissolution as if the corporation had not been dissolved; and
 - (c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available to satisfy the judgment or order.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 66 or 74 or an attorney referred to in section 24.

(4) Notwithstanding the dissolution of a corporation, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution; but an action to enforce that liability may not be brought after 2 years from the date of the dissolution of the corporation.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit; and, if the plaintiff establishes his claim, the court may refer the proceedings to a referee or other officer of the court, who may

- (a) add as a party to the proceedings before him each person found by the plaintiff to have been a shareholder;
- (b) determine, subject to subsection (4), the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

289. (1) Upon the dissolution of a corporation, the portion of the property distributable to a creditor or shareholder who cannot be found must be converted into money and paid into the Consolidated Fund. Unknown claimants.

(2) A payment under subsection (1) is satisfaction of the debt or claim of the creditor or shareholder.

(3) If, at any time within 6 years after the date on which any money is paid into the Consolidated Fund pursuant to subsection (1), any person establishes his entitlement to the money so paid into the Fund, he is entitled to be paid an equivalent amount out of the Consolidated Fund.

290. (1) Subject to subsection (2) of section 288 and section 289, any property of a corporation that has not been disposed of at the date of the corporation's dissolution vests in the Crown. Crown vested with property.

(2) The corporation is entitled to be paid out of the Consolidated Fund

- (a) any money received by the Crown pursuant to subsection (1) in respect of the corporation; and
- (b) if property other than money vested in the Crown pursuant to subsection (1) in respect of the corporation and that property has been disposed of, an amount equal to the lesser of
 - (i) the value of any such property at the date it vested in the Crown, and
 - (ii) the amount realised by the Crown from the disposition of that property.

PART XIV

ADMINISTRATION

Division A

FUNCTIONS OF THE REGISTRAR

Registrar of Corporations

Registrar. **291.** The Principal Registrar shall, under the general supervision of the Minister, be responsible for the administration of this Act.

Service upon Registrar. **292.** A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex, facsimile or by prepaid post or cable addressed to the Registrar at his office.

Register of Corporations

Register of Corporations. **293.** The Registrar must maintain a Register of Corporations in which to keep the name of every corporation

(a) that is

(i) incorporated under this Act; or

(ii) restored to the register pursuant to this Act, and

(b) that has not been subsequently struck off that register.

Inspection of register. **294.** (1) A person who has the consent, in writing, of the majority of directors and who has paid the prescribed fee is entitled, during normal business hours, to examine, and to make copies of or extracts from, a document required by this Act or the regulations, to be sent to the Registrar, except a report sent to him under subsection (2) of section 317.

(2) The Registrar must, upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Act, except a report received by him pursuant to subsection (2) of section 317.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form

- (a) the Registrar must furnish any copy required to be furnished under this Act in an intelligible written form; and
- (b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Notices and Documents

295. (1) A notice or document required by this Act, the regulations, articles or the by-laws to be sent to a shareholder or director of a corporation may be sent by telex, facsimile or by prepaid post or cable, addressed to, or may be delivered personally to

Notice to directors, etc.

- (a) the shareholder at his latest address as shown in the records of the corporation or its transfer agent; and
- (b) the director at his latest address as shown in the records of the corporation or in the latest notice filed under section 66 or 74.

(2) A director named in a notice sent by a corporation to the Registrar under section 66 or 74 and filed by the Registrar is, for the purposes of this Act, a director of the corporation referred to in the notice.

296. A notice or document sent in accordance with section 295 to a shareholder or director of a corporation is, for the purpose of this Act, presumed to be received by him at the time it would be delivered in the ordinary course of mail.

Presumption of receipt.

297. If a corporation sends a notice or document to a shareholder in accordance with section 295 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the corporation need not send any further notices or documents to the shareholder until he informs the corporation in writing of his new address.

Undelivered documents.

Waiver of
notice.

298. Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

Certificate
by
corporation.

299. A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, any unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust deed or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

Evidentiary
value.

300. When introduced as evidence in any civil, criminal or administrative action or proceeding

- (a) a fact stated in a certificate referred to in section 299;
- (b) a certified extract from a register of shareholders or debenture holders of a corporation; or
- (c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Copies.

301. Where a notice or document is required by this Act to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document.

Filed
articles.

302. (1) In this section, "statement" means a statement of intent to dissolve referred to in section 271 and a statement of revocation of intent to dissolve referred to in section 273.

(2) Where this Act requires that articles or a statement relating to a corporation be sent to the Registrar, unless otherwise specifically provided

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- (a) 2 copies, in this section called "duplicate originals", of the articles or the statement must be signed by a director or an officer of the corporation, or, in the case of articles of incorporation, by the incorporator; and
- (b) upon receiving duplicate originals of any articles or statement that conform to law, and any other required documents and the prescribed fees, the Registrar must
- (i) endorse on each of the duplicate originals the word "registered" and the date of the registration,
 - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement,
 - (iii) file a copy of the certificate and attached articles or statement,
 - (iv) send to the corporation or its representative the original certificate and attached articles or statement, and
 - (v) publish in the *Gazette* notice of the issue of the certificate.
- (3) A certificate referred to in subsection (2) and issued by the Registrar may be dated as of the day he receives the articles, statement or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles or statement.
- (4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically reproduced on the certificate.

303. The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the representative of that person. Alteration of documents.

Correction
of
documents.

304. (1) If a certificate that contains an error is issued to a corporation by the Registrar, the directors or shareholders of the corporation must, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Act, and take such other steps as the Registrar may reasonably require; and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

(3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Registrar must forthwith give notice of the correction in the *Gazette*.

Proof of
documents.

305. (1) The Registrar may require that a document or a fact stated in a document required or sent to him pursuant to this Act be verified in accordance with subsection (2).

(2) A document or fact required by this Act or by the Registrar to be verified may be verified by affidavit or affirmation.

(3) The Registrar may require of a corporation the authentication of a document; and the authentication may be signed by the secretary, or any director or authorised person or by the attorney-at-law for the corporation.

Retention of
documents.

306. The Registrar need not produce any document of a prescribed class after 6 years from the date he received it.

Registrar's
certificate.

307. (1) The Registrar may, on payment of the prescribed fee, furnish any person with a certificate stating

- (a) that a body corporate has or has not sent to the Registrar a document required to be sent to him pursuant to this Act;
- (b) that a name, whether that of a corporation or not, is or is not on the register; or
- (c) that a name, whether that of a corporation or not, was or was not on the register on a stated date.

(2) Where this Act requires or authorises the Registrar to issue a certificate or to certify any fact, the certificate or the certification must be signed by the Registrar.

(3) Except in a proceeding under section 276 to dissolve a corporation, a certificate or certification mentioned in subsection (2) that is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

308. (1) The Registrar may refuse to receive, file or register a document submitted to him, if he is of the opinion that the document Refusal power.

- (a) contains matter contrary to the law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains an error, alteration or erasure;
- (e) is not sufficiently legible; or
- (f) is not sufficiently permanent for his records.

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and re-submitted, or that a new document be submitted in its place.

(3) If a document that is submitted to the Registrar is accompanied with a statutory declaration by an attorney-at-law that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Act, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

309. Every document sent to the Registrar must be in typed or printed form. Filing form.

*Removal from Register*Striking off
register.

310. (1) The Registrar may strike off the register a corporation if

- (a) the corporation fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
- (b) the corporation contravenes section 11, 251, 252, 254, 256 or 326;
- (c) the corporation is dissolved;
- (d) the corporation does not carry out an undertaking to change its name; or
- (e) the corporation carries on any business or engages in any activity other than that set out in section 3(1).

(2) Where the Registrar is of the opinion that a corporation is in default under paragraph (a) of subsection (1), or is otherwise liable to be struck off the register, he must send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the corporation will be struck off the register.

(3) Section 312 applies *mutatis mutandis* to the notice mentioned in subsection (2).

(4) After the expiration of the time mentioned in the notice, the Registrar may strike the corporation off the register and publish a notice thereof in the *Gazette*.

(5) Where a corporation is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

Liability
continues.

311. Where a corporation is struck off the register, the liability of the corporation and every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.

Service

- 312.** A notice or document may be served on a corporation Service on corporation.
- (a) by leaving it at, or sending it by telex, facsimile or by prepaid post or cable addressed to, the registered office of the corporation; or
- (b) by personally serving any attorney, director, officer, receiver, receiver-manager or liquidator of the corporation.

Corporation Names

313. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended corporation or for a corporation about to change its name. Reservation of name.

- 314.** The name of a corporation Prohibited name.
- (a) must not be the same as or similar to the name of any other corporation incorporated under this Act if the use of that name would be likely to confuse or mislead, unless the corporation consents in writing to the use of that name in whole or in part;
- (b) must not suggest or imply a connection with the Crown, or the Government or of any Ministry, department, branch, bureau, service, agency or activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;
- (c) must not suggest or imply a connection with a political party or a leader of a political party;
- (d) must not suggest or imply a connection with a university or a professional association recognised by the laws of Barbados, unless the university or professional association concerned consents in writing to the use of the proposed name; and
- (e) must not be a name that is prohibited by the regulations.

Refusal of articles.

315. The Registrar may refuse to accept articles of incorporation or continuation for a corporation or to register articles amending the name of a corporation if

- (a) it is likely to be confusing with that of a corporation that was dissolved; or
- (b) is likely to be misleading.

Division B

INVESTIGATIONS OF CORPORATIONS

Investigation

Investigation order.

316. (1) A shareholder or debenture holder of a corporation, or the Registrar, may apply, *ex parte* or upon such notice as the court may require, to the court for an order directing that an investigation be made of the corporation or any of its affiliated corporations.

(2) If, upon an application under subsection (1) in respect of a corporation, it appears to the court that

- (a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on in a manner, or the powers of the directors are or have been exercised in a manner, that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of a shareholder or debenture holder;
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order that an investigation be made of the corporation and any of its affiliated corporations.

(3) If a shareholder or debenture holder makes an application under subsection (1), he must give the Registrar reasonable notice thereof; and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

(4) An *ex parte* application under this section must be heard in camera.

(5) No person shall publish anything relating to an *ex parte* proceeding except with the authorisation of the court or the written consent of the corporation that is being, or is to be, investigated.

317. (1) In connection with an investigation under this Part in respect of a corporation, the court may make any order it thinks fit, including Court powers.

- (a) an order to investigate;
- (b) an order appointing an inspector, who may be the Registrar, and fixing the remuneration of the inspector and replacing the inspector;
- (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) an order authorising an inspector to enter any premises in which the court is satisfied that might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (e) an order requiring any person to produce documents or records to the inspector;
- (f) an order authorising an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;
- (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;
- (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

- (i) an order requiring an inspector to make an interim or final report to the court;
- (j) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the court designates;
- (k) an order requiring an inspector to discontinue an investigation; or
- (l) an order requiring the corporation to pay the costs of the investigation.

(2) An inspector must send to the Registrar a copy of every report made by the inspector under this Part.

Inspector's powers.

318. (1) An inspector under this Part has the powers set out in the order appointing him.

(2) An inspector must upon request produce to an interested person a copy of any order made under subsection (1) of section 317.

Hearings *in camera*.

319. (1) An interested person may apply to the court for an order that a hearing conducted by an inspector under this Part be heard *in camera* and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear and be heard in person or by an attorney-at-law.

Incriminating evidence.

320. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence, or a prosecution under section 4 or 7 of the *Perjury Act* in respect of the evidence.

321. An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

Privilege
absolute.

Inquiries

322. (1) If the Registrar is satisfied that, for the purposes of Part VI there is reason to inquire into the ownership or control of a share or debenture of a corporation or any of its affiliates, the Registrar may require any person that he reasonably believes has or has had an interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the Registrar, or to any person the Registrar appoints

Ownership
interest.

- (a) information that the person has or can reasonably be expected to obtain as to present and past interests in the share or debenture; and
- (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the share or debenture on behalf of the persons so interested.

(2) For the purposes of subsection (1), a person has an interest in a share or debenture, if

- (a) he has a right to vote or to acquire or dispose of the share or debenture or any interest therein;
- (b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the share or debenture; or
- (c) any other person interested in the share or debenture can be required, or is accustomed, to exercise rights or privileges attached to the share or debenture in accordance with his instructions.

323. Nothing in this Part affects the privileges that exist in respect of an attorney-at-law and his client.

Client
privileges.

Inquiries. **324.** The Registrar may make of any person any inquiries that relate to compliance with this Act by any person.

Division C

MISCELLANEOUS

Regulations. **325.** (1) The Minister may make such regulations as are required for the better administration of this Act, and, in particular, the Minister may make regulations

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount thereof;
- (c) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by him;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of corporations;
- (f) respecting the authorised capital of corporations;
- (g) respecting the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of corporations;
- (h) respecting the designation of classes of shares; and
- (i) respecting any other matter required for the efficient administration of this Act.

(2) Regulations made under this section are subject to negative resolution.

326. No person shall make or assist in making a report, return, notice or other document that is required by this Act or the regulations to be sent to the Registrar or to any other person, and that,

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made.

327. (1) An attorney-at-law is entitled to rely upon information obtained from the Registrar in Barbados.

(2) An attorney-at-law, shall be indemnified by the Registrar 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 as a result of advice given by him to a client upon reliance on information referred to in subsection (1) where the information was inaccurate or deficient.

328. No civil remedy for any act or omission is affected by reason that the act or omission is one for which the corporation is liable to be struck off the register under this Act.

329. (1) Where a power of attorney given by a corporation fails, the Registrar in Barbados is the attorney for the corporation upon whom any process, notice or demand may be served.

(2) Subsection (1) does not authorise the execution of any order of the court or the levy of distress against the Registrar in his personal or official capacity; and no liability for any acts of the corporation attaches to the Registrar.

330. The *Exchange Control Act*, *Income Tax Act* and the *Stamp Duty Act* do not apply to corporations incorporated under this Act or to the directors or officers of such a corporation who are resident outside the Caribbean Community.

Reports.

Indemnification of attorney-at-law.

Civil remedies unaffected.

Registrar as attorney for service.

Non-application of certain enactments. Cap. 71. Cap. 73. Cap. 91.

PART XV

CONSTRUCTION AND INTERPRETATION
OF ACT*Corporate Relationships*

Affiliated
corpora-
tions.

331. For the purposes of this Act

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

"Control" of
corporation.

332. For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

"Holding"
and
"subsidiary".

333. For the purposes of this Act

- (a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Public Distribution of Corporate Securities

"Distribu-
tion" to
public.

334. (1) For the purposes of this Act

- (a) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture

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- (i) there has been, under the laws of Barbados or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock exchange take-over bid circular or similar instrument; or
 - (ii) the share or debenture is listed for trading on any stock exchange wherever situated; and
- (b) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in sub-paragraph (i) of paragraph (a) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Act, the shares or debentures of a corporation that are issued upon a conversion of other shares or debentures of a corporation, or in exchange for other shares or debentures, are part of a distribution to the public if any of those others were part of a distribution to the public.

(3) For the purposes of this Act

- (a) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;
- (b) a statement included in a prospectus or statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included; and
- (c) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise.

335. (1) Any reference in this Act to offering shares or debentures to the public includes, unless the contrary intention appears, a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; and references in this Act or in the articles of a corporation to

"Offer" to the public.

invitations to the public to subscribe for shares or debentures must, unless the contrary intention appears, be similarly construed.

(2) Subsection (1) does not require that any offer or invitation be treated as being made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(3) A provision in the articles or by-laws of a corporation that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the corporation.

Legislative Expressions

"Shall" use
of.

336. (1) Where the auxiliary "shall" is used in a provision of this Act

- (a) to require that a person do or refrain from doing some act, matter or thing; or
- (b) to require that some act, matter or thing be done or not be done by some specific means, or manner, or in some specific form or at or within some specific time,

the provision is imperative, and default in complying with it constitutes a contravention of this Act.

(2) Unless otherwise expressly provided, default in complying with an imperative provision referred to in subsection (1) does not invalidate any act, matter or thing done in contravention of the provision nor prevent the later doing of that act, matter or thing in accordance with the provision.

(3) Compliance with a provision referred to in subsection (1) is enforceable in any court of competent jurisdiction, notwithstanding that the contravention of the provision is punishable or has been punished pursuant to statute.

337. (1) The auxiliary "may" is permissive, empowering and enabling; and when used in the negative form, it negatives any permission, power or capacity to do the act, matter or thing in respect of which the auxiliary is used so that, unless the contrary is expressly provided, the act, matter or thing is to be construed, so far as it can be done without allowing the statute to be made an instrument of fraud, as not being capable of being done in law or in fact.

"May":
use of.

(2) When the exercise of a power is subject to any qualification or condition, the power is not exercised unless the qualification or condition is met or complied with.

(3) Unless otherwise expressly provided, the doing of any act, matter or thing pursuant to a permission or power is within the sole and absolute discretion of the person to whom the permission or power is given.

338. (1) Where the auxiliary "must" is used in a provision of this Act

"Must":
use of

- (a) to require that a person do or refrain from doing some act, matter or thing;
- (b) to require that an act, matter or thing be done or not be done by some specific means, or manner, or in some specific form, or at or within some specific time; or
- (c) to prescribe a qualification or condition for some purpose, office or status,

the provision imposes a duty or obligation upon the person required to comply with it.

(2) Defaulting in complying with the duty or obligation referred to in subsection (1) does not constitute an offence under this Act unless the default is made an offence by a provision of this Act expressly mentioning the act, matter or thing or the duty or obligation or the provision imposing the duty of obligation.

(3) Compliance with any duty or obligation is enforceable in any court of competent jurisdiction.

(4) A person aggrieved by a breach of a duty or obligation referred to in subsection (1) may recover, by action in the court, any damages suffered by him as a direct result of the breach; but this subsection does not apply if the breach is an act or omission

- (a) in the performance of a function of a legislative nature or of a judicial nature; or
- (b) in the performance in good faith of a ministerial function by a Minister or employee of the Crown in the administration of this Act.

(5) When a provision of this Act that uses the auxiliary "must" to prescribe any qualification or condition for some purpose, office or status, the qualification or condition is mandatory and default in complying with it, unless it is otherwise provided

- (a) frustrates the purpose;
- (b) vitiates the status;
- (c) vacates the tenure in the office,

to which the qualification or condition is attached, but without affecting the operation of subsections (2) to (4).

Corporate and Other Expressions

Definition
of technical
words.

339. In this Act

- (a) "affairs" means, in relation to any corporation or other body corporate, the relationship among the corporation or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the corporations or other bodies corporate;
- (b) "affiliate" means an affiliated corporation or affiliated body corporate within the meaning of section 330;

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- (c) "associate" when used to indicate a relationship with any person means
- (i) a corporation or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights
 - (A) under all circumstances,
 - (B) by reason of the occurrence of an event that has occurred and is continuing, or
 - (C) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
 - (ii) a partner of that person acting on behalf of the partnership of which they are partners;
 - (iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
 - (iv) a spouse of that person within the meaning of subsections (3) and (4) of section 2 of the *Succession Act*; Cap. 249.
 - (v) a child, step-child or adopted child of that person; and
 - (vi) a relative of that person or of his spouse if that relative has the same residence as that person;
- (d) "auditors" includes a partnership of auditors;
- (e) "beneficial interest" or "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
- (f) "body corporate" includes a corporation within the meaning of subsection (1) of section 2 or other body corporate wherever or however incorporated, other than a corporation sole;

- (g) "corporate instruments" includes any statute, letters patent memorandum of association, articles of association, certificate of incorporation, by-laws, regulations or other instrument by which a body corporate is incorporated or that governs or regulates the affairs of a body corporate;
- (h) "debenture" includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;
- (i) "director", in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called, and "directors" and "board of directors" include a single director;
- (j) "incorporator" means, in relation to a corporation, a person who signs the articles of incorporation of the corporation;
- (k) "legal representative", in relation to a corporation, shareholder, debenture holder or other person, means a person who stands in place of and represents the corporation, shareholder, debenture holder or person and, without limiting the generality of the foregoing, includes, as the circumstances require, a trustee, executor, administrator, assignee or receiver of the corporation, shareholder, debenture holder or person;
- (l) "liability" includes, in relation to a corporation, any debt of the corporation that arises under
 - (i) section 49,
 - (ii) subsection (2) of section 189, or
 - (iii) paragraph (f) or (g) or subsection (3) of section 194;
- (m) "ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

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- (n) "record" includes any register, book or other record that is required to be kept by a corporation or other body corporate;
- (o) "redeemable share" means a share issued by a corporation
- (i) that the corporation can purchase or redeem upon demand of the corporation, or
 - (ii) that the corporation is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;
- (p) "resident Barbadian" means an individual who is
- (i) a Barbadian citizen ordinarily resident in Barbados;
 - (ii) a Barbadian citizen not ordinarily resident in Barbados who is a member of a prescribed class of persons; or
 - (iii) a permanent resident within the meaning of the *Immigration Act*;
- (q) "security interest" means a security interest within the meaning of section 94;
- (r) "send" includes deliver;
- (s) "series", in relation to shares, means a division of a class of shares;
- (t) "share" includes stock;
- (u) "shareholder", in relation to a corporation, includes
- (i) the personal representative of a deceased shareholder;
 - (ii) the trustee in bankruptcy of a bankrupt shareholder; and
 - (iii) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of shareholders, or, if 2 or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

Cap. 190.

- (v) "special resolution" means a resolution
 - (i) passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of the resolution, or
 - (ii) signed by all the shareholders entitled to vote on the resolution.