ST. HELENA

(Chapter No. not allocated yet)

COMPANIES ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown
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Visit our LAWS page to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

[1] These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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COMPANIES ORDINANCE

(Ordinances 1 of 2004 and 11 of 2011)

AN ORDINANCE TO MAKE PROVISION FOR THE REGISTRATION OF COMPANIES IN ST. HELENA AND TO PROVIDE FOR RELATED MATTERS.

Commencement
[10 March 2004]

Short title and commencement

1. (1) This Ordinance may be cited as the Companies Ordinance, 2004.

(2) This Ordinance shall come into operation on such day as the Governor may appoint by notice in the *Gazette*.

(3) A notice may appoint different days for different provisions or for different purposes of the same provision.

PART I
CONSTRUCTION AND INTERPRETATION OF ORDINANCE

Interpretation

2. In this Ordinance, unless the context otherwise requires—

"affairs" means, in relation to any company or other body corporate, the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers thereof, but does not include any businesses carried on by the companies or other bodies corporate;

"affiliate" means an affiliated company or affiliated body corporate within the meaning of section 3;

"articles" means, unless qualified—

(a) the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of re-organization, articles of dissolution, and articles of revival; and

(b) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate;

"associated" when used to indicate a relationship with any person means—

(a) a company 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—

(i) under all circumstances;

(ii) by reason of occurrence of an event that has occurred and is continuing; or

(iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) 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;

(d) a spouse of that person;

(e) a legitimate or an illegitimate child, a step-child or an adopted child of that person; and

(f) a relative of that person or of his spouse if that relative has the same residence as that person;

"auditor" includes a partnership of auditors;

"beneficial interest" or **"beneficial ownership"** includes ownership through a trustee, legal representative, agent or other intermediary;

"body corporate" includes a company within the meaning of this section or other body corporate wherever or however incorporated, other than a corporation sole;

"commencement date" means the date on which this Ordinance comes into operation;

"company" means a body corporate that is incorporated under this Ordinance;

"Consolidated Fund" has the same meaning as given in section 2 of the Financial Management Ordinance Cap. 142;

"court" means the St.Helena Supreme Court or a judge thereof;

"corporate instruments" includes any statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

"debenture" includes debenture stock and any bond or other instrument evidencing an obligation or guarantee, whether secured or not;

"director" in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called;

"foreign company" means any firm or other body of persons, whether corporate or incorporated, that is formed under the laws of a country other than St.Helena;

"foreign regulatory authority" means such authority as is specified by the Governor by Order published in the Gazette as the authority which exercises any function which in the opinion of the competent authority relates to financial services, companies or insurance;

"incorporator" means, in relation to a company a person who signs the articles of incorporation of the company;

"legal representative" in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, 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 company, shareholder, debenture holder or person;

"officer" in relation to a body corporate means—

(a) the chairman, deputy chairman, president or vice-president of the board of directors;

(b) the managing director, general manager, comptroller, secretary or treasurer; or

(c) any other person who performs for the body corporate functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is appointed by the board of directors to perform such functions;

"ordinary resolution" means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

"person" includes a company, trust, partnership, limited duration company or other association;

"public company" means a company any of whose issued shares or debentures are or were part of a distribution to the public within the meaning of section 7;

"record" includes any register, book or other record that is required to be kept by a company or other body corporate;

"redeemable share" means a share issued by a company—

(a) that the company can purchase or redeem upon demand of the company; or

(b) that the company is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

"Registrar" refers to the Registrar of Companies under this Ordinance;

"security interest" means any interest in or charge upon any property of a company, by way of mortgage, bond, lien, pledge or other means that is created or taken to secure the payment of an obligation of the company;

"send" includes deliver;

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

"share" includes stock;

"shareholder" in relation to a company, includes—

(a) a member of a company described in Divisions A and B of Part III, except where inconsistent with a provision of that Division;

(b) the personal representative of a deceased shareholder;

(c) the trustee in bankruptcy of a bankrupt shareholder; and

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

"special resolution" means a resolution of which at least 21 days' notice is given which is—

(a) passed by a majority of not less than 75 percent of the votes cast by the shareholders who voted in respect of the resolution; or

(b) signed by all the shareholders entitled to vote on the resolution.

Corporate Relationships

Affiliated corporations

3. For the purposes of this Ordinance—

(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 two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

"Control"

4. For the purposes of this Ordinance, 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"

5. For the purposes of this Ordinance a body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

Public Distribution of Corporate Securities

"Distribution" to public

6. **(1)** For the purposes of this Ordinance—

(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;

(i) there has been, under the laws of St.Helena 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 subparagraph (i) of paragraph (a) would be required if the share or debenture were being issued currently.

(2) For the purposes of this Ordinance, the shares or debentures of a company that are issued upon a conversion of other shares or debentures of a company, 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 Ordinance—

(a) a statement included in a prospectus or a 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

(b) 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.

"Offer" to the public

7. **(1)** Any reference in this Ordinance 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 Ordinance or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, 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 person other than those 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 company 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 company.

“Subsidiary”

8. For the purpose of this Ordinance a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

PART II

FORMATION AND OPERATION OF COMPANIES

DIVISION A: INCORPORATION OF COMPANIES

Incorporation

9.[2] **(1)** Subject to subsection (2), one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar.

(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 St.Helena or elsewhere; or

(b) has the status of a bankrupt,

shall form or join in the formation of a company under this Ordinance.

(2A) For the avoidance of doubt, it is hereby declared that the Attorney General may (by the title of his office, acting on behalf of Her Majesty in right of Her government of St. Helena)—

(a) incorporate, either alone or in association with others, a company;

(b) hold shares in a company limited by shares;

(c) be a member of a company limited by guarantee;

(d) hold debentures or other securities issued by a company; or

(e) be appointed to be a director or other officer of a company.

(3) Every company incorporated under this Ordinance shall be—

(a) a company limited by shares; or

(b) a company limited by guarantee.

Formalities

10. (1) Articles of incorporation shall follow the approved form and set out, in respect of the proposed company–

(a) its proposed name;

(b) the name and address within St.Helena of the first registered office of the company;

(c) whether the company is limited by shares or guarantee;

(d) the classes and any maximum number of shares that the company is authorized to issue; and

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

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

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

(f) the number of directors, or subject to paragraph (a) of section 70 the minimum and maximum number of directors;

[2] *Subsection (2A) inserted by Ordinance 11 of 2011*

(g) any restrictions on the business that the company may carry on; and

(h) that the liability of members of a company incorporated under this Ordinance, shall, according to the articles of incorporation be limited, either to the amount paid on the shares respectively held by them or to such amount as the members may respectively undertake by the articles of incorporation to contribute to the assets of the company in the event of its being wound up.

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

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

Required votes

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

(2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 72.

Documentation

12. An incorporator shall send to the Registrar with the articles of incorporation the documents required by subsection (1) of section 68 and subsection (1) of section 150.

Certificate of Incorporation

13. Upon receipt of articles of incorporation, the Registrar shall issue a certificate of incorporation; and the certificate is conclusive proof of the incorporation of the company named in the certificate.

Effective date

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

Corporate Name

15. The word "limited", "corporation" or "incorporated" or the abbreviation "ltd." or "corp." or "inc." or "plc" shall be the last part of the name of every company; but a company may use and may be legally designated by either the full or the abbreviated form.

Reserved name

16. A company shall not be incorporated with or have a name–

(a) that is prohibited or refused under sections 235 and 236; or

(b) that is reserved for another company or intended company under section 234.

Name change

17. Where, through inadvertence or otherwise, a company–

(a) comes into existence with a name that contravenes section 16; or

(b) is, upon an application to change its name, granted a name that contravenes section 16,

the Registrar may direct the company to change its name by virtue of the provisions of this Division.

Name revocation

18. Where a company has been directed under section 17 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 Ordinance, the Registrar may revoke the name of the company and assign to it a name; and, until changed by virtue of the provisions of this Division, the name of the company is thereafter the name so assigned.

Assigned name

19. (1) When a company has had its name revoked and a name assigned to it under section 18, the Registrar shall issue a certificate of amendment showing the new name of the company and shall forthwith give notice of the change in the Gazette.

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

Pre-Incorporation Agreements

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

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

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

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

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

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

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

DIVISION B: CORPORATE CAPACITY AND POWERS

Capacity and powers

21. (1) A company has the capacity, and, subject to any limitations in this Ordinance or any other law, all the rights, powers and privileges of an individual.

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

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

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

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

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

Powers reduced

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

Validity of acts

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

Notice not presumed

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

No disclaimer allowed

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

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

(b) that the persons named in the most recent notice to the Registrar under section 68 or 76 are not the directors of the company;

(c) that the place named in the most recent notice sent to the Registrar under section 150 is not the registered office of the company;

(d) that a person held out by a company as a director, an officer or an agent of the company has not been duly appointed or had no authority to exercise the powers

and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;

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

(f) that the financial assistance referred to in section 55 or the sale, lease, or exchange of property referred to in section 126 was not authorized, except where that person has, or ought to have by virtue of his position with or relationship to the company, knowledge to the contrary.

Contracts of a company

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

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

(b) may be varied or discharged in the like manner that it is authorized 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 company 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 company.

(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 company.

Bills and notes

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

Power of attorney

28. (1) A company 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 within or outside St.Helena.

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

Company seals

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

(2) If authorized by its by-laws, a company may have for use in any country other than St.Helena or for use in any district or place not situated in St.Helena, an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every country, district or place where it is to be used.

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

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

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

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

DIVISION C: SHARE CAPITAL

Shares

Nature of shares

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

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

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

(4) If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as they rank 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 of the particular class.

One class of shares

31. When a company has only one class of shares, the right 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 company; and

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

Shares classes

32. The articles of a company 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 shall be set out in the articles; and

(b) the rights set out in section 31 shall be attached to at least one class of shares, but all of those rights need not be attached to the same class of shares.

Share issue

33. (1) Subject to the articles, the by-laws, any unanimous shareholder agreement, and section 37, shares may be issued at such times, and to such persons, and for such consideration, as the directors may determine.

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

Consideration

34. (1) A share shall not be issued until it is fully paid—

(a) in money, or

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

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

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

Stated capital accounts

35. (1) A company shall maintain a separate stated capital account expressed in any of the established currencies for each class and series of shares that it issues.

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

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

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

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

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

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

(6) Notwithstanding section 34 and subsection (2)—

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

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

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

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

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

Series shares

36. (1) The articles of a company may authorize the issue of any class of shares in one or more series, and may authorize 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 authorized 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 authorized under this section, the directors shall send to the Registrar articles of amendment in the approved form to designate a series of shares.

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

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

Pre-emptive rights

37. (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 company 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.

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

(a) for consideration other than money; and

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

Conversion privileges

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

(2) Conversion privileges, options and rights to acquire shares of a company 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

39. Where a company—

(a) has granted privileges to convert any debentures or shares issued by the company 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 company limited the number of authorized shares, the company shall reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Own shares

40. (1) Subject to subsection (2), and except as provided in sections 41 to 43, a company shall not hold shares in itself or in its holding body corporate.

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

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

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

Acquisition of own shares

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

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

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

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

Other acquisition

42. (1) Notwithstanding subsection (2) of section 47, but subject to subsection (3) and to its articles, a company may purchase or otherwise acquire its own issued shares—

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

(b) to eliminate fractional shares; or

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

(2) Notwithstanding subsection (2) of section 41, a company may purchase or otherwise acquire its own shares or own issued shares to satisfy the claim of a shareholder who dissents under section 160.

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

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

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

Redeemable shares

43. (1) Notwithstanding subsection (2) of section 41 or subsection (3) of section 42, but subject to subsection (2) and to its articles, a company may, at prices not exceeding the redemption price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

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

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

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

(i) its liabilities, and

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

Donated shares

44. Subject to section 48, a company may accept from any shareholder a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 46.

Voting

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

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

(b) has complied with any provisions in regulations relating to proxies.

Stated capital reduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stated capital adjustment

47. (1) Upon a purchase, redemption or other acquisition by a company under section 41, 42, 43, 59 or 160, of shares or fractions thereof issued by it, the company 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 class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall adjust its stated capital accounts in accordance with any special resolution referred to in subsection (2) of section 46.

(3) Upon a conversion of issued shares of a class into shares of another class, or upon a change under Division C of Part I of issued shares of a company into shares of another class or series, the company shall—

(a) deduct, from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion; and

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

(4) For the purposes of subsection (3), when a company issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a

share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation of shares

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

Presumption re own shares

49. For the purposes of sections 47 and 48, a company holding shares in itself as permitted by section 41 is deemed not to have purchased redeemed or otherwise acquired those shares.

Changing share class

50. (1) Shares issued by a company and converted or changed under Division C of Part I into shares of another class or series of shares become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles limit the number of authorized shares of a class or series of shares of a company 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 shall, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Effect of purchase contract

51. (1) A contract with a company providing for the purchase of shares of the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby being in breach of section 41 or 42.

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of the contract is prevented by section 41 or 42.

(3) Until the company 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 company is lawfully able to do so; or

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

Commission for share purchase

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

Prohibited dividend

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

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

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

Payment of dividend

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

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

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

Illicit loans by company

55. (1) When circumstances prejudicial to the company exist, the company or any company with which it is affiliated shall not, except as permitted by section 56, directly or indirectly, give financial assistance by means of a loan guarantee or otherwise—

(a) to a shareholder, director, officer or employee of the company or affiliated company, 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 company or a company with which it is affiliated.

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

(a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or

(b) the realizable value of the company'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 company's liabilities and stated capital of all classes.

Permitted loans

56. Notwithstanding section 55, a company may give financial assistance to any person by means of a loan, guarantee or otherwise—

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

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

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

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

(e) to employees of the company 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 company or any of its affiliates to be held by a trustee; or
(iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

Enforcement of illicit loans

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

Immunity of shareholders

58. The shareholders of a company are not, as shareholders, liable for any liability, act or default of the company except under subsection (5) of section 46 or subsection (2) of section 125.

Lien on shares

59. (1) Subject to this Ordinance, the articles of a company may provide that the company has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the company.

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

DIVISION D: MANAGEMENT OF COMPANIES

Duty of directors to manage Company

60. (1) Subject to any unanimous shareholder agreement the directors of a company shall—

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

(2) The directors of a public company must take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a public company.

(3) For the purposes of this section, a person—

(a) who immediately before the commencement of this Ordinance, held the office of secretary, assistant secretary or deputy secretary of a public company;
(b) who, for at least 3 of the 5 years immediately preceding his appointment as secretary, held the office of secretary to a public company;
(c) who is a member of good standing of a recognised accounting body approved by the Registrar;
(d) who is a legal practitioner; or
(e) who by virtue of his holding or having held any other position appears to be capable of discharging the functions of a secretary of a public company,

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

Number of directors

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

Restricted powers

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

By-Law powers

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

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

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

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

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

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

(4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.

(5) A shareholder who is entitled to vote at an annual meeting of shareholders may, make a proposal to make, amend or repeal a by-law.

Organizational meeting

64. (1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which the directors may—

(a) make by-laws;

(b) adopt forms of share certificates and corporate records;

(c) authorize 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 a meeting of directors referred to in subsection (1) by giving by post not less than 7 clear days notice of the meeting to each director and stating in the notice the time and place of the meeting.

Disqualified directors

65. (1) An individual who is prohibited by subsection (2) of section 9 from forming or joining in the formation of a company may not be a director of any company.

(2) When an individual is disqualified under section 66 from being a director of a company, that individual may not, during that period of disqualification, be a director of any company.

Court disqualified directors

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

(a) beginning—
(i) with the date of the order; or
(ii) if the individual is undergoing, or is to undergo a term of imprisonment and the court so directs, with the date on
(iii) 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 shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in St.Helena or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Registrar shall give that individual not less than 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 public company, the Registrar and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by a legal practitioner.

No qualification required

67. Unless the articles of a company otherwise provide, a director of the company need not hold shares issued by the company.

Notice of directors

68. (1) At the time of sending articles of incorporation of a company to the Registrar, the incorporators shall send him, in the approved form, a notice of the names of the directors of the company; and the Registrar shall file the notice.

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

(3) Subject to paragraph (b) of section 70, the shareholders of a company, shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.

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

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

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

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

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

Alternate directors

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

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

Cumulative voting

70. Where the articles of a company provide for cumulative voting, the following rules apply—

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

(b) each shareholder who is entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him, multiplied by the number of directors to be elected, and he may cast all his

votes in favour of one candidate, or distribute them among the candidates in any manner;

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 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) each director ceases to hold office at the close of the first annual meeting of shareholders following his election;

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

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

Termination of office

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

(a) he dies or resigns;

(b) he is removed in accordance with section 72;

(c) he becomes disqualified under section 65 or 66.

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

Removal of directors

72. (1) Subject to paragraph (g) of section 70, the shareholders of a company may–

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

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

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

(3) Subject to paragraph (b) to (e) of section 70, 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 74.

Right to notice

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

(2) A director—

(a) who resigns; or

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

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

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

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

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

Filling vacancy

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

(2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall 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 company 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 numberof 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 company may provide that a vacancy among the directors be filled only—

(a) by a vote of the shareholders; 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.

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

Numbers changed

75. The shareholders of a company may amend the articles of the company to increase or, subject to paragraph (h) of section 70 to decrease, the number of directors, or the minimum or maximum number of directors, but no decrease shortens the term of the incumbent director.

Notice of change

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

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

Directors' meeting

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

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

Notice and waiver

78. A director may, in any manner, waive a notice of 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

79. 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

80. Where a company has only one director, that director shall constitute a meeting.

Telephone participation

81. (1) Subject to the by-laws of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all persons 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 Ordinance, present at the meeting.

Delegation of powers

82. (1) Directors of a company 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 company 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 auditors;

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

(d) declare dividends;

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

(f) pay a commission referred to in section 52;

(g) approve any financial statements referred to in section 128; or

(h) adopt, amend or repeal by-laws.

Validity of acts

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

Resolution in writing

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

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

(b) the resolution satisfied all the requirements of this Ordinance relating to meetings of directors or committees of directors.

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

Liability of Directors

Liability for share issue

85. Directors of a company who vote for or consent to a resolution authorizing the issue of a share under section 33 for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

Liability for other acts

86. Directors of a company who vote for, or consent to, a resolution authorizing—

(a) a purchase, redemption or other acquisition of shares contrary to sections 41, 42 and 43;

(b) a commission contrary to section 52;
(c) a payment of a dividend contrary to section 53 or 54;
(d) financial assistance contrary to section 55;
are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

Contribution for judgement

87. A director who has satisfied a judgement founded on a liability under section 85 or 86 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgement was founded.

Recovery by action

88. (1) A director who is liable under section 86 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 41, 42, 52, 53, 54, 55, or 56.

(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 41, 42, 43, 52, 53, 54, 55, 56, 99 to 103;
(b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or
(c) make any further order it thinks fit.

Defence to liability

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

Time limit on liability

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

Contractual Interest

Interests in contracts

91. (1) A director or officer of a company—
(a) who is a party to a material contract or proposed material contract with the company; or
(b) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the company,

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

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

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

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

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

(d) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director.

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

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

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

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

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

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

(a) is an arrangement by way of security for money loaned to, or obligations undertaken by him, for the benefit of the company or an affiliate of the company;

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

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

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

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

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

Interest declaration

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

Avoidance of nullity

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

(a) by reason only of that relationship; or

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

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

Setting aside contract

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

Officers of the Company

Designation of officers, etc

95. Subject to this Ordinance and to the articles or by-laws of a company or any unanimous shareholder agreement—

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

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

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

Borrowing Powers of Directors

Borrowing powers

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

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

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

(c) subject to section 55, give a guarantee on behalf of the company to secure performance of an obligation of any person; and

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

(2) Notwithstanding subsection (2) of section 82 and paragraph (a) of section 95, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a

company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or any officer of the company.

Duty of Directors and Officers

Duty of care

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

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

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

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

(3) The duty imposed by subsection (2) on the directors of a company is owed by them to the company alone; and the duty is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

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

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

(b) for the purposes of any legal proceedings;

(c) pursuant to the requirements of any enactment; or

(d) when authorized by the company.

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

(6) Subject to subsection (2) of section 125, no provision in a contract, the articles of a company, its by-laws or any resolution, relieves a director or officer of the company from the duty to act in accordance with this Ordinance or the regulations, or relieves him from liability for a breach of this Ordinance or the regulations.

Dissenting to resolutions

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

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

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

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

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

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

(a) causes his dissent to be placed with the minutes of the meeting; or
(b) sends his dissent by registered post or delivers it to the registered office of the company.

(4) A director is not liable under section 85, 86 or 97 if he relies in good faith upon—
(a) financial statements of the company represented to him by an officer of the company; or
(b) a report of a legal practitioner, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnities

Indemnifying directors, etc

99. (1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgement in its favour, a company may indemnify—
(a) a director or officer of the company;
(b) a former director or officer of the company; or
(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,
and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgement) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified—
(a) acted honestly and in good faith with a view to the best interests of the company; and
(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

For derivative action

100. A company may with the approval of the Court indemnify a person referred to in section 99 in respect of an action—
(a) by or on behalf of the company or body corporate to obtain a judgement in its favour; and
(b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,
against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in subsection (2) of section 99.

Right to indemnity

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

(b) qualified in accordance with the standards set out in section 99 or 100; and
(c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc

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

Court approval of indemnity

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

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by a legal practitioner.

(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 a legal practitioner.

Remuneration

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

DIVISION E: SHAREHOLDERS OF COMPANIES

Place of meetings

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

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

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

Meetings outside St.Helena

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

Calling meetings

107. The directors of a company—

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

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

Record date of shareholders

108. (1) For the purpose of—

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

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

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

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

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

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

Statutory date

109. If no record date is fixed—

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

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

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

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

Notice of record date

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

Notice of meeting

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

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

(b) to each director; and

(c) to the auditor of the company.

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

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

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

Special business

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

(a) the consideration of the financial statements;

(b) the directors' report, if any;

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

(d) the sanction of dividends;

(e) the election of directors; and

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

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

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

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

Shareholder meetings; waiver of notice and telephone participation

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

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

Shareholders List

List of shareholders

114. (1) A company shall—

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

(b) if no record date is fixed,

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

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

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

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

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

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

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

the transferee may vote his shares at the meeting.

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

Examination of list

115. A shareholder of a company may examine the list of its shareholders—

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

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

Quorum

Quorum at meetings

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

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

(3) If a quorum is not present within 30 minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day 2 weeks thereafter, at the same time and place; and, if at the adjourned meeting, a quorum is not present within 20 minutes of the appointed time, the shareholders present constitute a quorum.

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

Voting the Shares

Right to vote share

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

Representation of other body

118. (1) When a body corporate or association is a shareholder of a company, the company shall recognize any individual authorized by a resolution of the directors or

governing body of the body corporate or association to represent it at meetings of shareholders of the company.

(2) An individual who is authorized 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 shareholders

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

Voting method at meeting

120. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall 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

121. (1) Except where a written statement is submitted by a director under section 73 or an auditor under section 144—

(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 has been passed at a meeting of the shareholders; and

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

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders but failure so to keep such copy does not render void any action taken by the company.

Compulsory Meeting

Requisitioned shareholders meetings

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

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

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

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

(b) the directors have called a meeting of shareholders and have given notice thereof under section 108.

(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.

Controverted Affairs

Court review controversy

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

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

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

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

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

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

Shareholder Agreements

Pooling agreement

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

Unanimous shareholder agreement

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

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

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

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

Shareholder Approvals

Extraordinary transactions

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

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

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

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares,

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 authorize the sale, lease or exchange of the property, and may fix or authorize the directors to fix any of the terms and conditions of the sale, lease or exchange.

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

(5) The shareholders of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange in a manner different from the shares of another class or series.

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

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

DIVISION F: FINANCIAL DISCLOSURE

Accounts

127. A company, other than a public company (for which provision is made elsewhere in this Ordinance), shall keep proper books of accounts or other records with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company,

as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

Annual financial returns

128. (1) Subject to this section and to section 129, the directors of a public company shall place before the shareholders at every annual meeting of the shareholders of the company—

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

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

(ii) the immediately preceding financial year;

(b) the report of the auditor; and

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

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

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

Exemption for information

129. Upon the application of a company referred to in section 128 for authorization to omit for information from its financial statements any prescribed item or to dispense with the publication of any particular financial statement the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.

Consolidated financial returns

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

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

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

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

Approval of directors

131. (1) The directors of a public company shall approve the financial statements referred to in section 128, and the approval shall be evidenced by the signature of 1 or more directors.

(2) A public company shall not issue, publish or circulate copies of the financial statements referred to in section 128 unless the financial statements are—

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by a report of the auditor of the company.

Copies of documents to be sent to shareholders

132. Not less than 21 days before each annual meeting of the shareholders of a public company or before the signing of a resolution under paragraph (b) of subsection (1) of section 121 in lieu of its annual meeting, the company shall send a copy of the documents referred to in section 128 to each shareholder, except a shareholder who has informed the company in writing that he does not want a copy of those documents.

Registrar's copies

133. (1) A public company shall send a copy of the documents referred to in section 128 to the Registrar, not less than 21 days before annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 121 in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

(2) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in circumstances that he specifies.

(3) If a company referred to in subsection (1)—

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

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

the company shall forthwith send copies thereof to the Registrar.

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

(a) the financial statements of its holding company are in consolidated or combined form and included the accounts of the subsidiary; and

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

Company Auditor

Eligibility for appointment

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

(a) is a practicing member of a recognized supervisory body, and

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

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

(3) In this section "recognized supervisory body" means a recognized accounting body approved by the Registrar.

Disqualifying auditor

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

(a) an officer or employee of the company; or

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

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

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

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

(a) a parent undertaking or subsidiary undertaking of the company; or

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

Effect of ineligibility

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

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

Appointment of auditor

137. (1) The shareholders of a public company shall, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 64(1)*(e)* is eligible for appointment under subsection (1).

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

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

Cessation of office

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

(a) he dies or resigns; or

(b) he is removed pursuant to section 139.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the company, or at the times specified in the resignation, whichever is the later date.

Removal of auditor

139. (1) The shareholders of a company may by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by a court order under section 141.

(2) A vacancy created by the removal of an auditor may be filled at any meeting at which the auditor is removed, or, if the vacancy is not so filled, it may be filled under section 140.

Filling auditor vacancy

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

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

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

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

Court appointed auditor

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

Auditor's rights to notice

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

Required attendance

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

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

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

Right to comment

144. (1) An auditor who—

(a) resigns;

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

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

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

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

(2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 142 and to the Registrar.

Examination by auditor

145. (1) An auditor of a company shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Ordinance to be placed before the shareholders, except such financial statement or parts thereof that relates to the immediately preceding financial year referred to in subparagraph (ii) of paragraph *(a)* of subsection (1) of section 128.

(2) Notwithstanding section 146, an auditor of a company may reasonably rely upon the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the company.

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

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

Right to inspect

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

(a) such information and explanations; and

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

as are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 145 and that the directors, officers, employees or agents are reasonably able to furnish.

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

(a) obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 145; and

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

Detected error

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

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

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

(a) prepare and issue revised financial statements; or

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

and, if the company is one that is required to comply with section 133, inform the Registrar of the error or mis-statement in the same manner as the directors inform the shareholders of the error or mis-statement.

Privilege of auditor

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

DIVISION G: CORPORATE RECORDS

Registered Office of Company

Registered office

149. (1) A company shall at all times have a registered office in St.Helena.

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

Notice of address

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

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

Company Registers and Records

Records of company

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

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

(b) minutes of meetings and resolutions of shareholders;

(c) copies of all notices required by section 68, 76, or 150; and

(d) registers of shareholders and of directors.

(2) A company that issues debentures shall prepare and maintain a register of debenture holdings 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 company that grants conversion privileges option, or rights to acquire shares of the company shall maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted and such other particulars in respect thereof as are prescribed.

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

Records of Trusts

Trust notices

152. (1) Except as provided in this section, notice of a trust express, implied or constructive, shall not be—

(a) entered by a company in any of the registers maintained by it pursuant to section 151; or

(b) received by the Registrar.

(2) No liabilities are affected by anything done in pursuance of subsection (3), (4) or (5); and the company concerned is not affected with notice of any trust by reason of anything so done.

(3) A personal representative of the estate of a deceased individual who was registered in a register of a company as a member or debenture holder may become registered as the holder of that share or debenture as personal representative of that estate.

(4) A personal representative of the estate of a deceased individual who was beneficially entitled to a share or debenture of the company that is registered in a register of the company may, with the consent of the company and of the registered member or debenture holder, become the registered member or debenture holder as the personal representative of the estate.

(5) When a personal representative of an estate of a deceased individual is registered pursuant to subsection (3) as a holder of a share or debenture of a company, the personal representative is, in respect of that share or debenture, subject to the same liabilities, and no more, that he would be subject to had the share or debenture remained registered in the name of the deceased individual.

Accounts, Minutes and Other Records

Other records

153. (1) In addition to the records described in section 151, a company shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committees of the directors.

(2) The records required under subsection (1) shall be kept at the registered office of the company or at some other place in St.Helena.

Form of Records

Records form

154. All records required by this Ordinance 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 of records

155. A company and its agents shall take reasonable precautions—

(a) to prevent loss or destruction of;

(b) to prevent falsification of entries in; and

(b) to facilitate detection and correction of inaccuracies in,

the records required by this Ordinance to be prepared and maintained in respect of the company.

Access to Records

Access to records

156. (1) The directors and shareholders of a company, and their agents and legal representatives, may during the usual business hours of the company, examine the records of the company referred to in section 151 and may take extracts therefrom free of charge.

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

Annual Returns

157. (1) A company shall in each year not later than the anniversary date of its incorporation or continuance under this Ordinance send to the Registrar a return in the approved form, containing such information as the Registrar requires made up to the date of the said return and accompanied by the prescribed fees.

(2) A director or officer of the company shall certify the contents of every return made under this section.

DIVISION H: FUNDAMENTAL COMPANY CHANGES

Reconstruction and Amalgamation

Proposed compromise

158. (1) Where a compromise or arrangement is proposed between a company and its creditors of any class, or between the company and its shareholders of any class, the Court may, on the application of the company or of any creditor or shareholder of the company or, in the case of a winding-up, of the liquidator, order a meeting of the creditors or class of creditors, or of the shareholders of the company or class of shareholders, as the case may be.

(2) If a majority representing 75 per cent in value of the creditors or class of creditors, or shareholders or class thereof as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the Court, be binding on all creditors or class of creditors, or on the shareholders or class thereof, as the case may be, and on the company or in the event of a winding-up, on the liquidator.

(3) An order made under subsection (2) has no effect until a copy has been filed with the Registrar; and a copy of such order shall be annexed to copies of the articles of the company issued after the making of the order.

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

Reconstruction and amalgamation

159. (1) Where an application is made to the Court under section 158 for the approval of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and the Court is satisfied that the compromise or arrangement is proposed for the purpose of or in connection with a scheme for the reconstruction of any company or the amalgamation of any two or more companies, and that under the scheme the undertaking or any part thereof or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order approving the compromise or arrangement or by any subsequent order, make provision for any of the following matters:-

(a) the transfer to the transferee company of the undertaking in whole or in part and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any person who, within such time and in such manner as the Court directs, dissents from the compromise or arrangement; and

(f) such incidental or consequential matters as are necessary to ensure that the reconstruction or amalgamation is carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which by virtue of the compromise or arrangement is to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar within 7 days of the making of the order.

Shares of dissentient shareholders

160. (1) Where a scheme or contract involving the transfer of shares or any class thereof in a company (in this section referred to as "the transferor company") to another company, whether or not a company within the meaning of this Ordinance (in this section referred to as "the transferee company") is, within 4 months after the making of the offer by the transferee company, approved by the holders of not less than 90 per cent in value of the shares affected, the transferee company may at any time within 2 months after the expiration of the 4 month period give notice in the prescribed manner to any dissenting shareholder.

(2) The notice referred to in subsection (1) must specify that the transferee company desires to acquire the shares of the dissenting shareholder and the transferee company shall be entitled to acquire the shares subject to the terms specified in the scheme unless, on an application made by the dissenting shareholder within one month from the date on which the notice is given, the Court orders otherwise.

(3) Where a notice is given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall on the expiration of one month from the date on which the notice is given, or if an application to the Court by the dissenting shareholder is pending, after the application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of the shares.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

(5) In this section "dissenting shareholder" includes a shareholder who has not assented to scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Altering Articles

Fundamental amendment to articles

161. (1) The articles of a company may, by special resolution be amended—

(a) to change its name;

(b) to add, change or remove any restrictions upon the business that the company can carry on;

(c) to change any maximum number of shares that the company is authorized to issue;

(d) to create new classes of shares;

(e) to change the designation of all or any of its shares, and add change or remove any rights privileges, restrictions and conditions, including rights to accrued dividends in respect of all or any of its shares, whether issued or unissued;

(f) to change the shares of any class or series, whether issued or unissued into a different number of shares of the same class or series, or into the same or a different number of shares or other classes or series;

(g) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(h) to authorize the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;

(i) to authorize the directors to change the rights, privileges, restrictions and conditions attached to the unissued shares of any series;

(j) to revoke, diminish or enlarge any authority conferred under paragraphs *(h)* to *(i)*;

(k) to increase or decrease the number of directors or the minimum or maximum number of directors subject to sections 70 and 75;

(l) to add, change or remove restrictions on the transfer of shares; or

(m) to add, change or remove any other provision that is permitted by this Ordinance to be set out in the articles.

(2) The directors of a company may, if authorised by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon, without further approval of the shareholders.

(3) A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business or affairs of the company may not be amended except with the consent of all the shareholders.

Delivery of articles and certificate

162. (1) Subject to any revocation under subsection (2) of section 161, after an amendment has been adopted under that section, articles of amendment in the approved form shall be sent to the Registrar.

(2) If an amendment effects or requires a reduction in stated capital, subsections (3) and (4) of section 46 apply.

(3) Upon receipt of articles of amendment from a company, the Registrar shall issue a certificate of amendment.

(4) An amendment to the articles of a company becomes effective on the date shown in the certificate issued by the Registrar in respect of that company; and the articles of the company are amended accordingly.

(5) No amendment to the articles affects—

(a) an existing cause of action or claim or liability to prosecution in favour of or against the company or its directors or officers; or

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

PART III
PROTECTION OF CREDITORS AND INVESTORS

DIVISION A: REGISTRATION OF CHARGES

Registration of charges

163. (1) A company shall maintain a register of all mortgages, debentures and charges specifically affecting property of the company and shall enter in the register in respect of each mortgage, debenture, or charge a short description of the property mortgaged or charged, the amount of charge created and the name of the mortgagee, debenture holders or persons entitled to such charge.

(2) The register of mortgages, debentures and charges required by subsection (1) shall be open to inspection by any creditor or shareholder of the company at all reasonable times.

(3) A company shall, as soon as practicable after the registration of a charge or discharge of a charge, submit details of such charge or discharge to the Registrar in the prescribed form.

DIVISION B: TRUST DEEDS AND DEBENTURES

Trust Deeds

Need for trust deeds

164. (1) A public company shall, 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 company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company—

(a) order the company 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.

Kinds of debentures

165. (1) Debentures belong to different classes if different rights attach to them in respect of—

(a) the rate of interest or the dates for payment of interest;

(b) the dates when, or the instalments 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 company or by drawings, ballot or otherwise;

(c) any right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or

(d) the powers of the debenture holders to realize any security interest.

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

(a) any security interest is realized; or

(b) the company is wound-up,

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

166. A debenture is covered by a trust deed if the debenture holder is entitled to participate in any money payable by the company 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.

Exception

167. Sections 164 to 166 do not apply to debentures issued before the commencement date, or to debentures forming part of a class of debentures some of which were issued before that date.

Contents of trust deed

168. (1) Every trust deed, whether required by section 164 or not, shall state—

(a) the maximum sum that the company can raise by issuing debentures of each specific issue;

(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 company 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 company 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 company 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 realize 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 Ordinance;

(l) the power of the company and the trustees to call meetings of the debenture holders, and the rights of debenture holders to require the company 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 section (1) shall 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.

(4) This section does not apply to a trust deed executed or to debentures issued before the commencement date.

DIVISION C:PROSPECTUS

Interpretation

169. (1) In this division—

"appointed stock exchange" means any stock exchange appointed by the Financial Secretary by notice in the *Gazette* to approve the offering of shares or debentures to the public;

"company" includes any association of persons seeking to be registered as such a company;

"competent regulatory authority" means any authority appointed by the Governor by notice in the *Gazette* to approve the offering of shares or debentures to the public;

"expert" includes an engineer, valuer, accountant and any other profession gives authority to a statement made by him;

"promoter" means a promoter who was a party to the preparation of the prospectus but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

"share" includes debentures, units or sub-units of a unit trust or a warrant conferring an option to acquire shares.

(2) An offer or invitation is not to be treated as made to the public if it is an offer to existing holders of shares in the company of the same class as the shares comprised in the offer without any right of renunciation.

Publication

170. Subject to the provisions of any other enactment no company shall offer shares to the public unless prior to the offer it publishes in writing a prospectus signed by or on behalf of all the directors or provisional directors of the company and files a copy with the Registrar.

Certificate of legal practitioner

171. The Registrar shall not accept for filing a copy of a prospectus unless it is accompanied by a certificate signed by a legal practitioner certifying that it contains the particulars required by subsection (1) of section 172 or that an appointed stock exchange or competent regulatory authority has approved it as a basis for offering shares to the public.

Contents of prospectus

172. (1) A prospectus shall contain the following information—

(a) the names, descriptions and addresses of the promoters, officers or proposed officers;

(b) the business or proposed business of the company;

(c) the minimum subscription which, in the opinion of the promoters, directors or provisional directors must be issued as provided in section 173;

(d) any rights or restrictions on the shares that are being offered;

(e) all commissions payable on the sale of the shares referred to in the prospectus and the net amount receivable by the company in respect of the sale;

(f) except in the case of an exempted company, the name and address of any person who owns 5 percent or more of the shares of the company;

(g) any shareholding in the company of an officer of the company;

(h) a report by the auditor of the company; and

(i) the date and time of the opening and closing subscription lists.

(2) Subsection (1) does not apply where an appointed stock exchange or competent regulatory authority has approved a prospectus as the basis for offering shares to the public.

Minimum amount required to be raised

Minimum subscription

173. A prospectus must contain the following particulars:-

(a) the minimum subscription which must be raised by the issue of shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—

(i) the purchase price of any assets purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company; and

(iii) the repayment of any moneys borrowed by the company in respect of any of the matters specified in paragraph (ii).

(b) the amounts to be provided in respect of the matters otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

Continuous offering of shares

174. Where any company continuously over a period offers shares to the public—

(a) every 12 months from the date of the last issue it shall issue a new prospectus which complies with the provisions of section 172; and

(b) whenever any of the particulars in a prospectus issued by such a company ceases in a material respect to be accurate it shall give reasonable public notice of the change of the particulars.

Liability for mis-statements

Civil liability for mis-statements

175. (1) Where a prospectus invites persons to subscribe shares in a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say:

(a) every person who is an officer of the company at the times of the issue of the prospectus;

(b) every person who has authorized himself to be named and is named in the prospectus as an officer or as having agreed to become an officer either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue to the public of the prospectus.

(2) No person is liable under subsection (1) if he proves—

(a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did up to the time of the allotment of shares believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had not withdrawn or altered it; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Where the prospectus contains—

(a) the name of a person as an officer of the company or as having agreed to become an officer of the company thereof, and he has not consented to become an officer, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(b) a statement by an expert or what purports to be a copy of or extract from a report or valuation of any expert, which the expert has withdrawn or altered,

the officer of the company, and any other person who authorized the issue thereof shall be liable to indemnify the person named or whose consent was required, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(4) A person is not deemed for the purposes of subsection (3) to have authorized the issue of a prospectus by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

Liability of experts

176. A person referred to as an expert in a prospectus is not liable under section 175 if any untrue statement was not made by him or that as regards any untrue statement made by him he was competent to make the statement and had reasonable grounds to believe and did believe up to the date of the issue of the prospectus that it was true or on becoming aware that the statement was untrue before the issue of the prospectus he had given reasonable public notice of his disassociation from the prospectus and the reasons therefor.

PART IV
OTHER REGISTERED COMPANIES

DIVISION A: ASSOCIATIONS NOT FOR PROFIT

Association not for profit

177. (1) Where the Registrar is satisfied that an association is being formed as a non-profit company, he may subject to subsection (2), accept the articles of the company.

(2) In order to qualify as a non-profit company, the association must restrict its undertaking to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, sporting, or athletic nature or the like or the promotion of some other useful object.

(3) The Registrar may attach such other reasonable conditions as he thinks fit to impose, and such conditions are binding on the company, and shall be endorsed on the articles of incorporation.

(4) Section 10 (1) applies to a non-profit company.

(5) The provisions of this Ordinance apply mutatis mutandis to non-profit associations.

DIVISION B: COMPANIES LIMITED BY GUARANTEE

Other companies

178. (1) Subject to subsections (2) and (3) a company limited by guarantee may be incorporated.

(2) Each member of such a company must undertake to contribute to the assets of the company in the event of its winding up, while he is a member or within such period after he ceases to be a member as is specified in the by-laws.

(3) The member is also liable, after he ceases to be a member for liabilities of the company incurred before he ceased to be a member and the costs, charges and expenses of winding-up and for adjusting of the rights and contributions amongst themselves in an amount to be specified.

(4) The provisions of this Ordinance apply mutatis mutandis to a company referred to in this Division.

DIVISION C: FOREIGN COMPANIES

Delivery of documents

179. A foreign company shall prior to commencing business within St.Helena deliver to the Registrar—

(a) a copy, certified under the public seal of the country, city, place or Registrar under the laws of which the foreign company has been incorporated, of its charter, statutes or articles of association or other instrument constituting or defining its constitution and if the instrument is not written in the English language a certified translation thereof;

(b) a list of its directors containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company;

(c) the names and addresses of one or more persons resident in St.Helena authorized to accept on its behalf service of process and any notices required to be served on it,

and shall pay to the Registrar the prescribed fee.

Certificate of registration

180. (1) Upon compliance with section 179, the Registrar shall register such company and issue a certificate of registration.

(2) A certificate of registration of a company issued under this section is conclusive evidence that the company has complied with all the requirements of this Ordinance.

Alteration of constituent instruments

181. If in the case of any foreign company any alteration is made in—

(a) its charter, statutes or memorandum and articles of association or any such instruments; or

(b) the names or addresses of the persons authorized to accept service on its behalf,

the foreign company shall within 21 days after the date on which particulars of the alterations have been received in St.Helena from the place where the foreign company is incorporated, deliver to the Registrar a return containing the particulars of the alteration.

Requirements

182. (1) A foreign company shall state the country in which the foreign company is incorporated in every prospectus inviting subscriptions for its shares or debentures in St.Helena.

(2) A foreign company shall—

(a) conspicuously exhibit on every place where it carries on business in St.Helena the name of the foreign company and the country in which it is incorporated; and

(b) cause the name of the foreign company and of the country in which it is incorporated to be stated in legible characters on all its bill heads, letter paper, notices, advertisements and other official publications; and

(c) if the liability of the members of the foreign company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and on all its bill heads, letter paper, notices, advertisements and other official publications in the Island, and to be affixed on every place where it or its agents carries on its business in the Island.

(d) within nine months of the end of its financial year make out a balance sheet and profit and loss account in such form, and containing such particulars and including such documents, as under the provisions of the law for the time being in force in the place where it is incorporated it was required in respect of each such year to make out and lay before the company, and shall deliver copies of the aforesaid balance sheet and profit and loss account to the Registrar.

Removal from register

183. (1) If any foreign company ceases to have a place of business in St.Helena it shall forthwith give notice of the fact to the Registrar, and from the date on which notice is so given the obligation of the foreign company to deliver any document to the Registrar ceases.

(2) Where the Registrar is satisfied by any other means that the foreign company has ceased to carry on or have a place of business in St.Helena he may close the file of the foreign company and thereupon the obligations of the foreign company to deliver any document to the Registrar ceases.

DIVISION D: SPECIFIED PRIVATE COMPANIES

Specified private company

184. (1) A private company limited by shares, incorporated under this Ordinance and qualifying under subsection (3) of this section, is exempt from the provisions of this Ordinance specified in section 185.

(2) The Registrar shall, enter in a separate register the companies which are exempt under this Division.

(3) In order to qualify under subsection (1), the company must by its articles—

(a) restrict the right to transfer its shares;

(b) limit the number of its shareholders (exclusive of persons who are employees or former employees of the company) to 11;

(c) prohibit any invitation to the public to subscribe for any shares or debentures of the company;

(d) specify that business will be conducted in St.Helena.

(4) A private company may by special resolution cease to be a private company and must amend its articles accordingly.

(5) The Governor may, by order published in the *Gazette*, direct that any provisions of this Ordinance applicable to public companies shall apply *mutatis mutandis* to private companies which do not qualify as specified companies under subsection (1) of this section.

Exemptions

185. (1) A company to which section 184 refers and a company limited by guarantee is exempt from sections 35, 91 to 94, 110 and 111, 128 to 148, 153 and 169 to 176, or such other sections as may be prescribed.

(2) Notwithstanding subsection (1), such a company may at its option, elect to be bound by the provisions from which it is exempt.

Revocation of registration

186. The Registrar may revoke the registration of a company under this Division for failure to comply with any provision of this Division.

PART V
INSOLVENCY AND WINDING UP

Revival of company

187. (1) When a company has been dissolved under this Division, any interested person may apply to the Registrar to have the company revived.

(2) If the Registrar approves the application for the revival of a company, articles of revival in the approved form may be sent to the Registrar, who must thereupon issue a certificate of revival for the company.

(3) A company is revived on the date shown in its certificate of revival; and thereafter the company, subject to such reasonable terms as may be imposed by the Registrar, and to any rights acquired by any person after the dissolution of the company, has all the rights and privileges, and is liable for the obligations, that it would have had if it had not been dissolved.

(4) Any person who is aggrieved by the decision of the Registrar under this section, may appeal to the Court, and if the Court is satisfied that it would be just for the name of the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

Dissolution by resolution

188. A company that has not issued any shares may be dissolved at any time by resolution of all the directors.

No property

189. A company 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 resolution of the holders of each class, whether or not they are otherwise entitled to vote.

Effect of articles of dissolution

190. (1) Articles of dissolution in the approved form must be sent to the Registrar in respect of a company described in section 188 or 189.

(2) Upon receipt of articles of dissolution under subsection (1) for a company, the Registrar must issue a certificate of dissolution.

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

Proposing liquidation

191. (1) The directors of a company, or a shareholder who is entitled to vote at an annual meeting of the company, may make proposal for the voluntary liquidation of the company.

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

(3) A company may liquidate and dissolve by special resolution of the shareholders, or, if the company 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.

Intent to dissolve

192. (1) A statement of intent to dissolve a company must be sent to the Registrar in the approved form.

(2) Upon receipt of a statement of intent to dissolve a company, the Registrar must issue a certificate of intent to dissolve.

(3) When, a certificate of intent to dissolve a company is issued by the Registrar, the company 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 company.

(4) After the issue of a certificate of intent to dissolve the company shall—

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

(b) forthwith publish, in the Gazette and once in a newspaper distributed in St.Helena, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the company 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 paragraph (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

193. (1) The Registrar or any interested person may, at any time during the liquidation of a company, apply to the court for an order that the liquidation be continued under the supervision of the Court as provided in this Division; 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 a legal practitioner.

Revocation of intent to dissolve

194. (1) At any time after the issue of a certificate of intent to dissolve a company 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 approved form, a statement of revocation of intent to dissolve the company, if the revocation is approved in the same manner as the resolution was approved under subsection (3) of section 191.

(2) Upon the receipt of a statement of revocation of an intent to dissolve a company, the Registrar must issue a certificate of revocation of intent to dissolve the company.

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

Right to dissolve

195. (1) If a certificate of intent to dissolve a company has not been revoked and the company has complied with subsection (4) of section 192, the company must prepare articles of dissolution.

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

(3) Upon receipt under this section of the articles of dissolution of a company, the Registrar must issue a certificate of dissolution of the company.

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

Registrar's dissolution

196. (1) Subject to subsections (2) and (3), where a company—

(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 231,

the Registrar may dissolve the company by issuing a certificate of dissolution under this section, or he may apply to the court for an order dissolving the company, in which case section 201 applies.

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

(a) given to the company 120 days' notice of his decision to dissolve the company;

(b) published in the Gazette notice of his decision to dissolve the company.

(3) Unless cause to the contrary has been shown, or an order has been made by the court under section 198, the Registrar may, after the expiration of the period referred to in subsection (2), issue, in the approved form, a certificate of dissolution of the company.

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

Court dissolution

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

(a) has contravened section 22 or section 130, 132, or 156;

(b) has failed for 2 or more consecutive years to comply with the requirements of this Ordinance with respect to the holding of annual meetings of shareholders; or

(c) has procured any certificate under this Ordinance 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 a legal practitioner.

(3) Upon an application under this section, the court may order that the company be dissolved, or that the company 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 196 or section 198, the Registrar must—

(a) if the order is to dissolve the company, issue a certificate of its dissolution; or

(b) if the order is to liquidate and dissolve the company under the supervision of the court, issue a certificate of intent to dissolve the company,

and publish a notice of that intent in the Gazette.

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

Further grounds

198. (1) The court may order the liquidation and dissolution of a company or any of its affiliated companies upon the application of a shareholder, debenture holder, creditor, director or officer—

(a) if the court is satisfied that, in respect of a company or any of its affiliates—

(i) any act or omission of the company or any of its affiliates effects a result;

(ii) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or

(iii) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interest of any shareholder, debenture holder, creditor, director or officer; or

(b) if the court is satisfied that—

(i) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred; or

(ii) it is just and equitable that the company be liquidated and dissolved; or

(iii) the company is insolvent or unable to pay its debts.

(2) Upon an application under this section, the court may make such order under this section or section 200 as it thinks fit.

Supervision of court

199. (1) An application to the court to supervise a voluntary liquidation and dissolution under section 193 must state the reasons the court should supervise the liquidation and dissolution; and the reasons must be verified by the affidavit of the applicant.

(2) If the court makes an order applied for under section 206, the liquidation and dissolution of the company must be continued under supervision of the court in accordance with this Ordinance.

Court dissolution

200. (1) An application to the court under section 198 must state the reasons the company should be liquidated and dissolved; and the reasons must be verified by the affidavit of the applicant.

(2) Upon an application under section 198, the court may make an order requiring the company and any person having an interest in the company 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 company should not be liquidated and dissolved.

(3) Upon an application under section 193 to supervise a voluntary liquidation and dissolution of a company, the court may order the directors and officers of the company to furnish to the court all material information known to, or reasonably ascertainable by, them including—

(a) the financial statements of the company;

(b) the name and address of each shareholder of the company; 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 company has a contract.

(4) A copy of an order made under subsection (2) must—

(a) be published, in a newspaper distributed in St.Helena, 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 company or by such other person and in such manner as the court may order.

Court powers

201. In connection with the dissolution or the liquidation and dissolution of a company, the court may, if it is satisfied that the company 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 company;

(f) an order, at any stage of the proceedings, restraining the directors and officers of the company from—
  (i) exercising any of their powers; or
  (ii) collecting or receiving any debt or other property of the company and from paying out or transferring any property of the company 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 company—
  (i) to the company; or
  (ii) for an obligation of the company;

(h) an order approving the payment, satisfaction or compromise of claims against the company and the retention of amounts for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the company; whether liquidated, unliquidated, future or contingent;

(i) an order disposing of, or destroying the documents and records of the company;

(j) upon the application of a creditor, the inspectors 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 206, 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 of discontinuing the liquidation proceedings; or
  (iii) an order to the liquidator to restore to the company all its remaining property; and

(o) after the liquidator has rendered his final accounts to the court, an order dissolving the company.

Cessation of business

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

(a) the company 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 authorized 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.

Appointment of liquidator

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

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

Duties of liquidator

204. A liquidator must—

(a) forthwith after his appointment, give notice of his appointment to the Registrar and to each claimant and creditor of the company 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 distributed in St.Helena, notice—

(i) requiring any person indebted to the company 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 company to deliver it to the liquidator at the time and place specified; and

(iii) requiring any person having a claim against the company, 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 company is registered or has a place of business and to require persons described in paragraphs (i) to (iii) to take similar action;

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

(d) open and maintain a trust account for the moneys of the company received and paid out by him;

(e) keep accounts of the moneys of the company received and paid out by him;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the company;

(g) if at any time the liquidator determines that the company 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 company in the form required by section 127 or 128, or in such other 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 company among the shareholders according to their respective rights.

Powers of liquidator

205. (1) A liquidator may—

(a) retain legal practitioners, 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 company;

(c) carry on the business of the company as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the company;

(e) do all acts and execute any documents in the name and on behalf of the company;

(f) borrow money on the security of the property of the company;

(g) settle or compromise any claims by or against the company;

(h) make financial provision in respect of the custody of the documents and records of the company after its dissolution; and

(i) do all other things necessary for the liquidation of the company 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 company represented to him by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company; or

(b) an opinion, a report or a statement of a legal practitioner, 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 mis-appropriated any property of the company, 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 mis-appropriated property of the company, 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 company and must pay or make adequate provision for all claims against the company.

Final accounts

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

(a) for approval of final accounts and for an order permitting him to distribute in money or in kind the remaining property of the company to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons thereof.

(2) If a liquidator fails to make the application required by subsection (1), a shareholder of the company 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 201;

(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 distributed in St.Helena, or as otherwise direct 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 company; 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.

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

Money distribution

207. (1) If, in the course of liquidation of a company, the shareholders resolve or the liquidator proposes—

(a) to exchange all or substantially all the property of the company 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 company to the shareholders in kind,

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

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

(a) that all the property of the company 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.

Record custody

208. A person who has been granted custody of the documents and records of a dissolved company remains liable to produce those documents and records for 6 years following the date of the company's dissolution, or until the expiry of such other shorter period as may be ordered under subsection (4) of section 206.

Continuation of actions

209. (1) In this section "shareholder" includes the legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a company under this Ordinance—

(a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the company within 2 years after its dissolution as if the company had not been dissolved; and

(c) any property that would have been available to satisfy any judgement or order if the company had not been dissolved remains available to satisfy the judgement or order.

(3) Service of a document on a company after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 68 or 76.

(4) Notwithstanding the dissolution of a company, 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 company.

(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 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.

Unknown claimants

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

(2) A payment under subsection (1) is in 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.

Crown vested with property

211. (1) Subject to subsection (2) of section 209 and section 210, any property of a company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When a company is revived under section 187, any property (other than money) that was vested in the Crown pursuant to subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its revival.

(3) The company 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 company; and

(b) if property other than money vested in the Crown pursuant to subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of—

(i) the value of any such property at the date it vested in the Crown; and

(ii) the amount realized by the Crown by the disposition of that property.

PART VI
ADMINISTRATION AND GENERAL

DIVISION A: FUNCTIONS OF THE REGISTRAR

Registrar of Companies

Responsibility

212. (1) The Registrar of Companies is, under the general supervision of the Attorney General, responsible for the administration of this Ordinance.

(2) A seal may be prescribed by the Attorney General for use by the Registrar in the performance of his duties.

Filing of documents

213. (1) The Registrar may, if he thinks fit accept, under any provision of this Ordinance or other enactment requiring a document to be delivered to him, any material other than a document which contain the information in question and is of a kind approved by him.

(2) The delivery to the Registrar of material so accepted is sufficient compliance with the provision of this Ordinance or other enactment.

(3) In this section any reference to delivering a document includes sending, forwarding, producing or giving it.

Immunity

214. No liability attaches to the Registrar or any person acting under the authority of the Registrar for any act done in good faith in the discharge of his functions under this Ordinance.

Register of Companies

Register of companies

215. (1) The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate—

(a) that is—

(i) incorporated under this Ordinance;

(ii) registered under the provisions of section 180 of this Ordinance;

(iii) restored to the register pursuant to this Ordinance; and

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

(2) A duplicate register of the matters specified in subsection (1) may be kept in any place outside St.Helena.

Inspection of register

216. (1) A person 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 Ordinance or the regulations, to be sent to the Registrar, except a report sent to him under subsection (2) of section 239.

(2) The Registrar shall 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 Ordinance, except a report received by him pursuant to subsection (2) of section 239.

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

(a) the Registrar shall furnish any copy required to be furnished under this Ordinance 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

Notice to directors etc

217. (1) A notice or document required by this Ordinance, the regulations, articles or the by-laws to be sent to a shareholder or director of a company may be sent by telex, telefax, by prepaid post or cable or by electronic means addressed to, or may be delivered personally to—

(a) the shareholder at his latest address as shown in the records of the company or its transfer agent; and

(b) the director at his latest address as shown in the records of the company or in the latest notice filed under section 68 or 76.

(2) A director named in a notice sent by a company to the Registrar under section 68 or 76 and filed by the Registrar is, for the purposes of this Ordinance, a director of the company referred to in the notice.

Presumption of receipt

218. A notice or document sent in accordance with section 217 to a shareholder or director of a company is, for the purpose of this Ordinance, presumed to be received by him at such time, having regard to the mode of dispatch, as it would in its ordinary course be delivered.

Undelivered documents

219. If a company sends a notice or document to a shareholder in accordance with section 217 and the notice or document is returned on 3 consecutive occasions because the shareholder cannot be found, the company need not send any further notices or documents to the shareholder until he informs the company in writing of his new address.

Notice waiver

220. Where a notice or document is required to be sent pursuant to this Ordinance, 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 company

221. A certificate issued on behalf of a company 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 company is a party, may be signed by a director, an officer or a transfer agent of the company.

Evidentiary value

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

(a) a fact stated in a certificate referred to in section 221;

(b) a certified extract from a register of members or debenture holders of a company; or

(c) a certified copy of minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

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

223. Where a notice or document is required by this Ordinance to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by telefax or other device.

Filed articles

224. (1) Where this Ordinance requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, notwithstanding any provision to the contrary contained in any local or applied enactment.

Alteration of documents

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

Correction of documents

226. (1) If a certificate that contains an error is issued to a company by the Registrar, the directors or shareholders of the company shall, upon the request of the Registrar, pass the resolutions and send to the Registrar the documents required to comply with this Ordinance, 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) shall bear the date of the certificate it replaces.

Proof of documents

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

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

(3) The Registrar may require of a body corporate the authentication of a document, and the authentication may be signed by the secretary, or any director or authorized person or by a legal practitioner for the body corporate.

Retention of documents

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

Registrar's certificate

229. (1) The Registrar may 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 Ordinance;

(b) that a name, whether that of a company or not, is or is not on the register; or

(c) that a name, whether that of a company or not, was or was not on the register on a stated date.

(2) Where this Ordinance requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate or the certification shall be signed by the Registrar or by his deputy.

(3) 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.

Refusal power

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

(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 Ordinance;

(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 a legal practitioner that the document contains no matter contrary to law and has been duly completed in accordance with the requirements of this Ordinance, the Registrar may accept the declaration as sufficient proof of the facts therein declared.

Removal from Register

Striking off register

231. (1) The Registrar may strike off the Register a company or other body corporate, if—

(a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Ordinance;

(b) the company is dissolved;

(c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;

(d) the company does not carry out an undertaking given under subparagraph (i) of paragraph (a) of section 235; or

(e) the registration of the body corporate is revoked pursuant to this Ordinance.

(2) Where the Registrar is of the opinion that a company or other body corporate is in default under paragraph (a) of subsection (1), he shall send a notice advising it of the default and stating that, unless the default is remedied within 90 days after the date of the notice, the company or other body corporate will be struck off the register.

(3) Section 233 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 company or other body corporate off the register and publish a notice thereof in the *Gazette*.

(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the approved form and upon payment of the prescribed fee and any outstanding fees, restore it to the register and issue a certificate in a form adapted to the circumstances.

(6) Any person who is aggrieved by the decision of the Registrar under this section, may appeal to the Court and if the Court is satisfied that it would be just for the name of the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

Liability continues

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

Service

Service on company

233. A notice or document may be served on a company—

(a) by leaving it at, or sending it by telex or telefax or by prepaid post or cable addressed to, the registered office of the company; or

(b) by personally serving any director, officer, receiver, receiver-manager or liquidator of the company.

Company Names

Reservation of name

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

Prohibited name

235. The name of a company—

(a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm consents in writing to the use of that name in whole or in part, and—
  (i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired; or
  (ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;

(b) shall not be identical to the name of a body corporate incorporated under the laws of St.Helena before the commencement date;

(c) shall not suggest or imply the patronage of Her Majesty or any member of the Royal Family or connection with Her Majesty's Government or any department thereof in the United Kingdom or elsewhere;

(d) shall not suggest or imply a connection with a political party or a leader of a political party;

(e) shall not suggest or imply a connection with a university or a professional association recognized by the laws of St.Helena unless the university or professional association concerned consents in writing to the use of the proposed name; and

(f) shall not be a name that is prohibited by the regulations.

Refusal of articles

236. The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if—

(a) the name is not distinctive because—
  (i) it is too general;
  (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal; or
  (iii) primarily it is only a geographic name used alone,
  unless the applicant established that the name has through use acquired and continues to have a secondary meaning;

(b) the name is defectively inaccurate in describing—
  (i) the business, goods or services in association with which it is proposed to be used;
  (ii) the conditions under which the goods or services will be produced or supplied;
  (iii) the persons to be employed in the production or supply of those goods and services;

(c) it is likely to be confusing with that of a company that was dissolved;

(d) it contains the word or words "credit union", "co-operative", or "co-op" when it connotes a co-operative venture; or

(e) it is, in the opinion of the Registrar, for any reason objectionable.

Amalgamated company

237. If two or more companies amalgamate, the amalgamated company may have—

(a) the name of one of the amalgamating companies;
(b) a distinctive combination that is not confusing of the amalgamating companies; or
(c) a distinctive new name that is not confusing.

DIVISION B: INVESTIGATION OF COMPANIES

Investigation

Investigation order

238. (1) A shareholder or debenture holder of a company, 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 a company and any of its affiliated companies.

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

(a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
(b) the business or affairs of the company 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 company or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose;
(d) persons concerned with the formation, business or affairs of the company or any of its affiliates have in connection therewith acted fraudulently or dishonestly; or
(e) in any case it is in the public interest that an investigation of the company be made,

the court may order that an investigation be made of the company and any of its affiliated companies.

(3) If a shareholder or debenture holder makes an application under subsection (1) he shall give the Registrar reasonable notice thereof; and the Registrar is entitled to appear and be heard in person or by a legal practitioner.

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

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

Court powers

239. (1) In connection with an investigation under this Division in respect of a company, the court may make any order it thinks fit, including—

(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 authorizing an inspector to enter any premises in which the Court is satisfied there 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 authorizing 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.

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

Inspector's powers

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

(2) An inspector shall upon request produce to an interested person a copy of any order made under subsection (1) of section 239.

In camera hearing

241. (1) An interested person may apply to the Court for an order that a hearing conducted by an inspector under this Division 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 Division may appear and be heard in person or by a legal practitioner.

Incriminating evidence

242. No person is excused from attending and giving evidence and producing documents and records to an inspector under this Division 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 the Perjury Act 1911 in respect of the evidence.

Privilege absolute

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

Inquiries

Ownership interest

244. (1) If the Registrar is of the opinion that, for the purposes of this Ordinance, there is reason to enquire into the ownership or control of a share or debenture of a company or

any of its affiliates, the Registrar may apply to the court by summons and shall cause a copy of such summons to be served on the company at its registered office:

Provided however, the Court may, upon sufficient cause shown in that behalf, dispense with the service of summons on the company.

(2) The court may after due enquiry require any person that it considers has or had interest in the share or debenture, or acts or has acted on behalf of a person with such an interest, to furnish to the court, or to any person the court appoints—

(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.

(3) 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.

Client privileges

245. Nothing in this Division affects the privileges that exist in respect of a legal practitioner and his client.

Inquiries

246. The court may make of any person any inquiries that relate to compliance with this Ordinance by any persons.

Disclosure of Information

Request for assistance

247. **(1)** The Registrar may for the purpose of assisting a foreign regulatory authority which has requested assistance, exchange documents or other information which are in his possession or which is obtained in such manner as may be prescribed:

Provided, however, such assistance shall not extend to any matter relating directly or indirectly to the imposition, calculation and collection of taxes.

(2) In determining whether to exercise his powers under this section, the Registrar may take into account—

(a) the seriousness of the matter to which the enquiries relate and the information sought; and

(b) whether it is appropriate in the public interest to give the information sought.

Restrictions on disclosure

248. (1) No information supplied by a foreign regulatory authority to the Registrar relating to the business or affairs of any person shall be disclosed for any purpose—

(a) by the Registrar; or

(b) by any person obtaining the information directly from the Registrar,

without the consent of the foreign regulatory authority, or person to whom the information relates.

(2) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000 or imprisonment for a term not exceeding 18 months or both, notwithstanding that the penalty exceeds the normal monetary limit of the Magistrates Court.

Non-application of section 248(1)

249. Subsection (1) of section 248 does not apply to any disclosure made for the purpose of—

(a) the institution of criminal proceedings; or

(b) carrying out a duty imposed under any law in force in St.Helena or by any international agreement to which St.Helena is a party.

Governor to specify foreign regulatory authorities

250. (1) The Governor may, at his discretion from time to time by Order published in the Gazette specify foreign regulatory authorities with whom the Registrar may exchange information and the Governor may in the same manner revoke any such Order.

(2) In determining whether to exercise his powers under this section, the Governor may take into account—

(a) whether corresponding assistance would be given in that country to an authority exercising regulatory functions in St.Helena; and

(b) whether the enquiries would relate to a possible breach of the laws of St.Helena or elsewhere.

DIVISION C: REGULATIONS

Regulations

251. The Governor in Council may make such regulations as are required for the better administration of this Ordinance, and, in particular, the Governor in Council may make regulations—

(a) prescribing any matter required or authorized by this Ordinance to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copy of any documents or in respect of any action that the Registrar is required or authorized to take under this Ordinance, and prescribing the amount thereof;

(c) prescribing the 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 Ordinance;

(e) respecting the names of companies or classes thereof;

(f) respecting the authorized capital of companies;

(g) respecting the transfer of shares and the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
(h) respecting the designation of classes of shares;
(i) prescribing the matters relating to the appointment of proxies;
(j) prescribing that specified companies be exempt from certain provisions of this Ordinance;
(k) respecting any other matter required for the efficient administration of this Ordinance.

DIVISION D: OFFENCES AND PENALTIES

Name offence

252. A company that contravenes section 15 is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

Reports

253. (1) A person who makes or assists in making a report, return, notice or other document—

(a) that is required by this Ordinance or the regulations to be sent to the Registrar or to any other person; and
(b) that—
(i) contains an untrue statement of a material fact; or
(ii) 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,

is guilty of an offence and liable–

(c) on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 18 months or both;
(d) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) When an offence under subsection (1) is committed by a body corporate and a director or officer of that body corporate knowingly authorized, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable—

(a) on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 6 months or to both;
(b) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years.

Specific offences

254. (1) A person is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding £5,000 and to imprisonment for a term not exceeding 18 months or to both;

(b) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years,

(i) who without reasonable cause contravenes section 155;

(ii) who wilfully contravenes Division C of Part II;

(iii) who without lawful excuse contravenes the provisions of Division C of Part IV;

(iv) who without reasonable cause fails to comply with a requirement of the Registrar under section 244 to report to the Registrar any information or any names or addresses of a person sought by the Registrar under that section;

(v) who, being an auditor or former auditor of a company, contravenes subsection (1) of section 143 without reasonable cause; or

(vi) who, being a director or officer of a company knowingly contravenes section 147.

(2) Where a person who is guilty of an offence under subsection (1) is a body corporate, then, whether the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the act or omission that constituted the offence is liable—

(a) on summary conviction to a fine not exceeding £5,000 and to imprisonment for a term not exceeding 18 months or to both;

(b) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years.

Company offences

255. (1) A company is guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding £5,000 and to imprisonment for a term not exceeding 18 months or to both;

(b) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years,

if the company without reasonable cause contravenes section 134 or 137.

(2) When a company is guilty of an offence under this section, any director or officer of the company who knowingly authorized, acquiesced in or permitted the contravention is also guilty of an offence and liable—

(a) on summary conviction to a fine not exceeding £5,000 and to imprisonment for a term not exceeding 18 months or to both;

(b) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 5 years.

General offences

256. Every person who is guilty of an offence under this Ordinance or the regulations shall be, if no punishment is elsewhere in this Ordinance provided for that offence, liable on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 18 months.

Order to comply

257. When a person is convicted of an offence under this Ordinance or the regulations, the Court, or a Court of summary jurisdiction in which proceedings in respect of the offence are taken, may in addition to any punishment it may impose, order that person to comply with

the provision of this Ordinance or the regulations for the contravention of which he has been convicted.

Limitation

258. A prosecution for an offence under this Ordinance or the regulations may be instituted at any time within 2 years from the time when the subject-matter of the prosecution arose.

Civil remedies unaffected

259. No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Ordinance.

DIVISION E: REPEAL, SAVINGS AND CONSEQUENTIAL AMENDMENTS

Repeal and savings

260. (1) The Overseas Companies Registration Ordinance Cap. 118 is repealed.

(2) Upon the commencement date of this Ordinance—

(a) all corporate instruments of a foreign company lodged; and

(b) all registrations, acts and things lawfully done under any provisions of any former Ordinance,

are presumed to have been lawfully done under this Ordinance, and shall continue in effect under this Ordinance as though they had been lawfully done under this Ordinance.

(3) For the purposes of subsection (2), "lawfully done" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed or passed as the circumstances may require.

Immigrants' Landholding (Restriction) Ordinance amended

261. The Immigrants' Land holding (Restriction) Ordinance Cap. 68 is amended in section 2 by inserting the following paragraph in the definition of "islander"—

"(h) (i) a company incorporated under the provisions of the Companies Ordinance 2004 that is controlled and managed by persons of St.Helenian status.

(ii) For the purposes of this paragraph a company shall be deemed to be controlled and managed by persons of St.Helenian status—

(a) if its directors are persons of St.Helenian status; and

(b) in the case of a company limited by shares, if the majority of shares in the company are held by persons of St.Helenian status.".

COMPANIES (APPOINTMENT OF REGISTRAR) REGULATIONS - Section 251

(Legal Notice 1 of 2004)

Short title

1. These Regulations may be cited as the Companies (Appointment of Registrar) Regulations, 2004.

Appointment of Registrar

2. **(1)** The Governor may, by notice in the *Gazette*, appoint a person to be the Registrar of Companies.

(2) The Registrar shall perform and carry out such duties as are conferred on him or her by the Companies Ordinance.