



SAINT VINCENT AND THE GRENADINES

ACT NO. 36 OF 2018

I ASSENT

[L.S.]

DR. FREDERICK BALLANTYNE
Governor-General
31st December, 2018.

AN ACT to amend the International Business Companies (Amendment and Consolidation) Act, Chapter 149.

[31st December, 2018]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

1. (1) This Act may be cited as the International Business Companies (Amendment and Consolidation) (Amendment) Act, 2018. Short title and commencement
- (2) This Act comes into force on the 1st day of January 2019.
2. The International Business Companies (Amendment and Consolidation) Act, in this Act referred to as the principal Act, is amended in section 1(1), by deleting "International Business Companies (Amendment and Consolidation) Act" and substituting "Business Companies (Amendment and Consolidation) Act". Short title of principal Act amended
3. The principal Act, is amended as follows—
 - (a) by deleting "an international business company" wherever the phrase occurs in the following provisions and substituting "a business company"—
 - (i) in section 2, in the definitions of "articles", "authorised capital", "capital", "incorporator", "member",International business companies to be known as "business companies"

“resolution of directors”, “resolution of members”,
“surplus”, “treasury shares” and “writing”;

- (ii) in sections 3, 9(1) and (2), 10(1), (2), (3), (4) and (5), 11(1), 13, 15(2), 16(2) and (4), 18, 19(1) and (2), 20(1) and (2), 21, 22, 23(1), 25(1), 26(1), (2) and (3), 27, 28, 29(4), 32(1), (2) and (3), 33(1), 34(1), 35(1) and (2), 36(1), 38(3) and (4), 41(1), (3) and (4), 43(1) and (4), 44, 45(1), (2) and (3), 46(1), 47(1), (2), (3) and (5), 48, 49(1), (3), (4), (5), (6), (7) and (8), 58(1), 62(2), 63(1), 66, 67(2) and (3), 68(2), (3), (5)(b), (6), (7) and (8), 69(1), 74(1) and (2), 75(1) and (2), 76, 77(1) and (3), 78(1), (2) and (3), 79(1), 80, 81(1), 82, 84(1) and (2), 88(1), 89(1), 95, 97, 99(1) and (2), 100, 101(1)(a), 102(1), 103(1), 109(1), 110, 138(1), (2) and the section heading, 139(1) and (4), 141(1), 143(1), 148(3)(e) and (5)(d)(i), 149(1), 151(2)(a), 152, 153(1), 154(1), 155(1), 156(1) and (2), 157(1), 159(1)(a)(i) and (ii) and (2)(a) and (b), 160(1), (2), (8), (9) and (10), 161(1), 162, 163(1) and (2), 165(3), 167(1) and (9), 168(1), 169(1)(a), 170(1), 172(2), 173(1), 174(1), 175(1), (2) and (3), 176, 178(1) and (2), 184(1), (9) and (10), 187(1), 193 and 196(2); and
- (iii) in column 2 of the Schedule, against the following sections in column 1; 29(4) and 86(2);
- (b) by deleting “the international business company” wherever the phrase occurs in sections 11(2), 17(1), 20(3) and (4), 33(3), 45(4), 55(1), 58(2), 68(6), 77(2), 85(2), 170(3) and 174(1) and substituting “the business company”;
- (c) by deleting “international business company” wherever it appears in column 2 of the Schedule and substituting (except where specified in paragraph (a)(iii) of this section), and substituting “business company”;
- (d) by deleting “company” in the following provisions and substituting “business company”—
 - (i) in section 2, in the definition of “register of members”; and
 - (ii) in sections 6 (first instance), 8(6) and (7), 15(1), 16(1) (first two instances), 23(2) (first instance), 24(1) (first instance), 39(1), 40, 41(7) and (10), 49(9), 53(1), 56(1)

(first instance), 56(2) (first instance), 56(3), 57(1) (both instances), 60(2), 63(2), 64(1)(a) and (b), 64(2), 65 (first instance), 77(4) (first instance), 83 (first instance), 87, 89(4) (first instance), 90(1) (first instance) and 90(4) (first instance), 91(1) (first instance) and 91(2) (first instance), 94(1) (first instance), 96(1), (2), (3) and (4) (first instance in each case), 98 (first instance), 105(2), 108(1) and (2), 109(3) and (4), 112(1), (2) and (3) (first instance in each case), 113(1) and (3) (first instance in each case), 114(1) (first instance), 138(3) (first instance), 140(1) (first instance) and 146;

- (e) in section 10(2), by deleting “registered international business company” and substituting “registered business company”;
- (f) in section 14(1) by deleting “proposed international business company” and substituting “proposed business company”;
- (g) in section 149–
 - (i) by deleting “parent international business company” in subsections (1) and (2) and substituting “parent business company”;
 - (ii) by deleting “subsidiary international business company” in subsection (1) and substituting “subsidiary business company”; and
 - (iii) by deleting “constituent international business company” in subsection (2)(a) and substituting “constituent business company”;
- (h) in section 151(2)(b), by deleting “constituent international business company” wherever the phrase occurs in paragraphs (i) and (iii) and substituting “constituent business company”;
- (i) in the section headings to sections 161 and 169, by deleting “international business company” and substituting “business company”; and
- (j) in section 171, by deleting “any international business company” and substituting “any business company”.

Amendment of
section 2

4. Section 2 of the principal Act is amended—

- (a) by designating the current provisions as subsection (1);
- (b) by inserting the following definitions in the appropriate alphabetical order—

“affiliate” has the meaning specified in subsection (2);

“balance date”, in relation to a business company, means—

- (a) the close of 31 December; or
- (b) such other date as the board by resolution adopts as the balance date of the company, with the approval of the Registrar;

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

“board” or “board of directors”, in relation to a business company, means—

- (a) the directors of the company acting together as the board of directors, by whatever name called; or
- (b) if the company has only one director, that director;

“business company” means—

- (a) a business company incorporated or continued under this Act; or
- (b) a consolidated company within the meaning of section 147;

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

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- “file” in relation to a document, means to file the document with the Registrar;
- “financial year”, in relation to a business company, means—
- (a) the period of one year ending on the balance date of the company; and
 - (b) if, as a result of the date of the incorporation or registration of the business company under this Act, or a change of the balance date of the company, the period ending on the balance date is longer or shorter than a year, that longer or shorter period;
- “large company” has the meaning specified in subsection (3);
- “registered office”, in relation to a business company, means the registered office specified in its articles in accordance with section 67; and
- “series” in relation to shares, means a division of a class of shares;
- (c) by repealing the definition of “approved custodian”;
 - (d) by repealing the definition of “international business company”;
 - (e) in the definition of “Register”, by deleting “International Business Companies” and substituting “Business Companies”;
 - (f) by repealing the definition of “registered agent” and substituting the following—
- “registered agent”, in relation to a business company, means the registered agent specified in its articles in accordance with section 68;

- (g) in the definition of “relevant licence”, by inserting after “a licence”, the words “to undertake the business of International Representation”;
- (h) by repealing the definition of “resident”; and
- (i) by inserting the following after the existing provisions as subsections (2) and (3)–

“(2) A business company is affiliated with another business company if it is in the same group as the other business company, and “affiliate” and “affiliated business company” shall be construed accordingly.

(3) A business company is a large company in respect of a financial year if–

- (a) the gross revenue of the company for the financial year exceeds four million dollars, or such greater sum as may be prescribed; or
- (b) as at the balance date for the financial year, its total assets exceed two million dollars, or such greater sum as may be prescribed.”.

5. Section 4 of the principal Act is repealed and the following substituted–

Repeal and substitution of section 4

“Application to incorporate a business company

4. (1) Subject to subsection (2), one or more persons may apply to the Registrar for the incorporation of a business company by filing–

- (a) an application to incorporate in the approved

form signed by the incorporators;

(b) articles of incorporation complying with section 14 signed by the incorporators; and

(c) such other documents as may be prescribed.

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

(a) is less than eighteen years of age;

(b) is of unsound mind and has been so found by a tribunal of competent jurisdiction in the State or elsewhere; or

(c) has the status of an undischarged bankrupt.

(3) Only the proposed registered agent may file an application for the incorporation of a business company.”.

6. Section 5 of the principal Act is amended—

Amendment of
section 5

(a) by deleting the section heading and substituting “Incorporation of a business company”;

(b) by repealing subsections (1) and (2) and substituting the following—

“(1) If satisfied that an application for the incorporation of a business company complies with this Act and the Regulations, the Registrar shall—

(a) register the documents filed; and

- (b) issue a certificate of incorporation bearing a unique registration number to the business company.
- (2) A certificate of incorporation issued under subsection (1) is conclusive evidence that—
- (a) the requirements of this Act as to incorporation have been complied with; and
- (b) the business company is incorporated on the date specified in the certificate of incorporation.”; and
- (c) in subsection (3), by deleting “Register of International Business Companies” and substituting “Register of Business Companies”.
- Repeal of section 7 7. The principal Act is amended by repealing section 7.
- Repeal of section 12 8. The principal Act is amended by repealing section 12.
- Amendment of section 14 9. Section 14 of the principal Act is amended—
- (a) in subsection (1)—
- (i) by repealing subparagraphs (iii) to (vi) of paragraph (e) and substituting the following—
- “(iii) a statement of the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;
- (iv) a statement that the company is not authorised to issue bearer shares, convert a registered share to a bearer share or exchange a registered share for a bearer share;
- (v) 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;”

- (ii) by repealing paragraph (i);
- (iii) in paragraph (j), by deleting “and” after the semi colon;
- (iv) in paragraph (k), by deleting the full stop and substituting “; and”
- (v) by inserting after paragraph (k) the following—
 - “(l) any restrictions on the business that the company may carry on; and
 - (m) any other matter required to be set out by this Act or the Regulations.”; and

- (b) by repealing subsection (3) and substituting the following—

“(3) The articles of a business company may limit the purposes, capacity, rights, powers or privileges of the company.”.

- 10. Section 15 of the principal Act is amended by inserting after subsection (2) the following—

Amendment of
section 15

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

- 11. Section 20 of the principal Act is amended—

Amendment of
section 20

- (a) by inserting after subsection (1) the following—

“(1A) A business company has the capacity to carry on its business, conduct its affairs and exercise its powers—

- (a) in the State; and
- (b) in any jurisdiction outside the State, to the extent that the laws of the State

and of that jurisdiction permit.”; and

(b) by inserting after subsection (4) the following—

“(5) This section does not authorise any business 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.”.

Amendment of
section 25

12. Section 25 of the principal Act is amended—

(a) by inserting at the end of the section heading, “and rights attaching to shares”;

(b) in subsection (2), by deleting “Unless otherwise specified in the articles or by-laws or upon the issue of a share, each share of an international business company has attached to it the following rights” and substituting “Subject to subsection (3), a share in a business company confers on the holder”; and

(c) by inserting after subsection (2), the following—

“(3) If authorised by its articles, a business company may issue—

(a) more than one class of shares;

(b) a class of shares in series; and

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

Amendment of
section 26

13. Section 26 of the principal Act is amended in subsection (1) by repealing paragraph (a).

Amendment of
section 29

14. Section 29 of the principal Act is amended—

(a) in subsection (1), by deleting “Unless expressly authorised to do so by its articles in accordance with section 14, an

international business company” and substituting “A business company”;

(b) by inserting after subsection (1), the following—

“(1A) A business company shall not issue a bearer instrument, including an option and a convertible instrument, that gives the holder a right, whether conditional or otherwise, to a share in the business company.”;

(c) by repealing subsections (2) and (3);

(d) in subsection (4), by deleting “or a segregated cell company that contravenes subsection (3)”;

(e) by repealing subsection (5).

15. The principal Act is amended by repealing section 30.

Repeal of section 30

16. Section 31 of the principal Act is amended by deleting “a company incorporated under this Act” and substituting “a business company”.

Amendment of section 31

17. Section 37 of the principal Act is amended by deleting “a company incorporated under this Act” and substituting “a business company”.

Amendment of section 37

18. Section 38(2) of the principal Act is amended by deleting “a company incorporated under this Act” and substituting “a business company”.

Amendment of section 38

19. Section 39 of the principal Act is amended in subsection (2) by deleting “or the beneficial interest in a bearer share”.

Amendment of section 39

20. Section 41 of the principal Act is amended by inserting after subsection (1), the following—

Amendment of section 41

“(1A) An instrument of transfer shall also be signed by the transferee if registration as a holder of the share imposes a liability to the business company on the transferee.”.

21. The principal Act is amended by repealing section 42.

Repeal of section 42

22. Section 43(5) of the principal Act is amended by deleting “A company incorporated under this Act” and substituting “A business company”.

Amendment of section 43

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| Amendment of section 49 | 23. Section 49 of the principal Act is amended by repealing subsection (2). |
| Amendment of section 50 | 24. Section 50 of the principal Act is amended by deleting “a company incorporated under this Act” and substituting “a business company”. |
| Repeal of section 51 | 25. The principal Act is amended by repealing section 51. |
| Amendment of section 52 | <p>26. Section 52 of the principal Act is amended—</p> <p>(a) in the definition of “guarantee member”—</p> <p style="padding-left: 20px;">(i) by deleting “company” and inserting “business company”; and</p> <p style="padding-left: 20px;">(ii) by repealing paragraphs (b), (c) and (d); and</p> <p>(b) in the definitions of “shareholder” and “unlimited member”, by deleting “company” and inserting “business company”.</p> |
| Amendment of section 53 | 27. Section 53 of the principal Act is amended in subsection (2) by inserting after “shall be a guarantee member”, the words “and if the company is authorised to issue shares, a guarantee member may also be a shareholder”. |
| Amendment of section 54 | <p>28. Section 54 of the principal Act is amended—</p> <p>(a) in subsection (1)—</p> <p style="padding-left: 20px;">(i) by deleting “An international business company may” and substituting “A business company shall”;</p> <p style="padding-left: 20px;">(ii) in paragraph (a), by deleting subparagraphs (v) and (vi);</p> <p style="padding-left: 20px;">(iii) in paragraph (c), by deleting the comma and substituting a full stop; and</p> <p style="padding-left: 20px;">(iv) by deleting the words from “but the company may delete” to the end of the subsection;</p> <p>(b) by inserting after subsection (1), the following—</p> <p style="padding-left: 40px;">“(1A) The registers of members shall contain such other information as may be prescribed.</p> <p style="padding-left: 40px;">(1B) The Regulations may prescribe the circumstances in which information relating</p> |

to a former member of a business company may be deleted from a register of members.”;

- (c) by repealing subsections (2) and (3);
- (d) by repealing subsection (4) and substituting the following—

“(4) The entry of the name of a person in the register of members as a holder of a share in a business company is *prima facie* evidence that legal title in the share vests in that person.”; and

- (e) by inserting after subsection (4), the following—

“(5) No notice of a trust, whether express, implied or constructive, shall be entered on the registers of members.”.

29. The principal Act is amended by inserting after section 54, the following—

Insertion of section 54A

“Requirement to file details of members

54A.(1) A business company shall, within the time period specified in subsection (2), file a notice in the prescribed form setting out the prescribed information in respect of each member entered in its register of members.

(2) A notice under subsection (1) shall be filed within the first occurring of—

- (a) thirty five days after the issue of a certificate of incorporation of the business company; or
- (b) seven days after the first member has, or the first members have, been entered on its register of members.

(3) A business company shall file a notice in the prescribed form of—

- (a) a change in the members of the company, whether as the result of a person becoming or ceasing to be a member, or both; or
- (b) a change in the name or address of a member of the company.

(4) A notice under subsection (2) shall be filed within ten days of—

- (a) the change occurring, in the case of a person becoming or ceasing to be a member; or
- (b) the business company first becoming aware of the change, in the case of the death of a member or a change in the name or address of a member.

(5) A business company that fails to comply with this section commits an offence and is liable as specified in the Schedule.”.

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| Amendment of section 55 | of | 30. Section 55 of the principal Act is amended in subsection (1)(a), by inserting after “is omitted”, the words “or deleted”. |
| Amendment of section 57 | of | 31. Section 57 of the principal Act is amended in subsections (1), (2) and (3), by deleting “or by-laws”. |
| Amendment of section 66 | of | 32. Section 66 of the principal Act is amended— <ul style="list-style-type: none"> (a) in paragraph (b), by deleting “; and” and substituting a full stop; and (b) by repealing paragraph (c). |

33. Section 67(1) of the principal Act is amended by repealing subsection (1) and substituting the following— Amendment of section 67

“(1) A business company shall at all times have a registered office which—

- (a) shall be a physical address in the State; and
- (b) may be the office of its registered agent.”.

34. Section 68 of the principal Act is amended— Amendment of section 68

(a) by repealing subsection (1) and substituting the following—

“(1) A business company shall have a registered agent in the State, who shall be a person who holds a relevant licence.”;

(b) in subsection (5)—

- (i) by repealing paragraph (a); and
- (ii) by deleting “to a company incorporated under this Act” and substituting “of a business company”; and

(c) by inserting after subsection (8), the following—

“(9) A business company commits an offence and is liable as specified in the Schedule if it—

- (a) does not have a registered agent; or
- (b) appoints as its registered agent a person who does not hold a relevant licence.”.

35. Sections 70 to 73 of the principal Act are repealed and the following substituted— Repeal and substitution of sections 70 to 73

“Records of 70.(1) A business company shall
b u s i n e s s keep the following documents at the
company to be office of its registered agent—
kept at office of
registered agent

- (a) the articles and by-laws of the company and a copy of any unanimous shareholder agreement together with any amendments of any of these documents;
- (b) the registers of members or copies of the registers of members;
- (c) the register of directors or a copy of the register of directors;
- (d) the register of charges required to be maintained under section 139 or a copy of the register of charges; and
- (e) a copy of each notice and other document filed by the company in the previous ten years;

(2) If a business company keeps a hard copy of a register referred to in subsection (1)(b), (c) or (d) at the office of its registered agent, as permitted by subsection (1), the company shall—

- (a) provide the registered agent with a written record of the physical address of the place at which the original register is kept; and
- (b) ensure that it notifies the registered agent in writing of any change in the

register within five working days of the change.

(3) If the place at which an original register or document referred to in subsection (1) is changed, a business company shall provide the registered agent with the physical address of the new location of the register or document within five working days of the change of location.

(4) A business company that contravenes subsection (1), (2) or (3) commits an offence and is liable as specified in the Schedule.

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| Minutes
meetings
and
resolutions | of
and | 71.(1) A business company shall keep— |
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- (a) minutes of each meeting of—
 - (i) directors;
 - (ii) members and classes of members;
 - (iii) committees of directors; and
 - (iv) committees of members and classes of members; and
 - (b) a copy of each resolution consented to by—
 - (i) directors;
 - (ii) members and classes of members;

(iii) committees of directors; and

(iv) committees of members.

(2) The minutes and resolutions specified in subsection (1) shall be kept—

(a) at the office of the registered agent or at such other place in or outside the State as the directors determine; and

(b) for a period of at least ten years following the date of the relevant meeting or resolution.

(3) If a business company keeps the minutes or resolutions, or any of them, at a place other than the office of its registered agent, the company shall—

(a) provide the registered agent with a written record of the physical address of the place at which the minutes or resolutions are kept; and

(b) if the place at which the minutes or resolutions are kept is changed, provide the registered agent with the physical address of the new location where the minutes or resolutions are kept within five working days of the change of location.

(4) A business company that contravenes subsection (1), (2) or (3)

commits an offence and is liable as specified in the Schedule.

Financial records

72.(1) A business company shall keep financial records, including underlying documentation, that are sufficient—

- (a) to show and explain its transactions;
- (b) to enable its financial position to be determined with reasonable accuracy, at any time;
- (c) to enable it to prepare such financial statements, or declaration of solvency, and make such returns as it is required to prepare and make under this Act and the Regulations and, if applicable under any other enactment; and
- (d) if applicable, to enable its financial statements to be audited in accordance with the requirements of any other enactment.

(2) The financial records of a business company may be kept at the office of its registered agent or at a place within or outside the State as the directors may determine.

(3) If a business company keeps hard copies of its financial records at a place other than the office of its registered agent, the company must ensure that it keeps at the office of its registered agent—

- (a) financial records that disclose with reasonable accuracy the financial position of the company at intervals not exceeding three months;
- (b) a written record of the place where the financial records are kept; and
- (c) if the place at which the financial records are kept is changed, provide the registered agent with the physical address of the new location where the financial records are kept within five working days of the change of location.

(4) The financial records under this section shall be kept for at least seven years after the end of the financial year to which they relate.

(5) For the purposes of this section, “underlying documentation” includes invoices, receipts, contracts and any other documents that—

- (a) evidence—
 - (i) a transaction entered into by the business company;
 - (ii) a sum of money received or expended by the business company; or

(iii) an asset or liability of the business company; or

(b) assist in determining the financial position of the business company.

(6) A business company that contravenes this section commits an offence and is liable as specified in the Schedule.

Form of records

73.(1) The registers, records and documentation required to be kept by a business company under this Act shall be kept—

(a) in hard copy; or

(b) either wholly or partly as electronic records.

(2) Records kept in electronic form shall be capable of being—

(a) made available at any time for inspection in legible form; and

(b) capable of being reproduced in hard copy;

at the office of the business company's registered agent.

(3) If any document to which subsection (1) applies is kept in hard copy outside the State, the business company shall ensure that the document is provided to the registered agent if requested by the registered agent.

(4) A business company that contravenes this section commits an offence and is liable as specified in the Schedule.”.

Amendment of section 74 36. The principle Act is amended in section 74 by inserting after subsection (6) the following—

“(7) A director of a business company is entitled, on giving reasonable notice, to inspect the documents and records of the company—

- (a) in written form;
- (b) without charge; and
- (c) at a reasonable time specified by the director;

and to make copies of or take extracts from the documents and records.”.

Insertion of Divisions 2A and 2B 37. The principal Act is amended by inserting the following after section 76—

“DIVISION 2A

Financial Reporting

Application of this Division 76A.(1) Subject to subsection (2), this Division applies to a business company if it is a large company.

(2) This Division does not apply to a business company in relation to a financial year if financial statements of the company are required to be prepared for that financial year under—

- Cap. 99 (a) the International Banks Act; or
- Cap. 307 (b) the International Insurance Act .

(3) A business company to which this Division applies is referred to as a reporting company.

Preparation of
financial
statements

76B. (1) A reporting company shall ensure that no later than four months after its balance date, financial statements are—

- (a) completed in relation to the company; and
- (b) dated and signed as approved by two directors of the company or, if the company only has one director, by that director.

(2) The financial statements of a reporting company shall—

- (a) be prepared in accordance with such accounting standards as may be prescribed;
- (b) include any additional information with respect to the financial position of the company and the results of its operations that may be required by the articles of the company, its by-laws, or any unanimous shareholder agreement; and
- (c) comply with any applicable requirements of the Regulations.

(3) A reporting company shall not issue, publish or circulate copies of its financial statements unless the financial statements are approved

and signed in accordance with subsection (1)(b).

Exemption for information

76C.(1) A reporting company may omit from its financial statements any information prescribed as information that may be so omitted.

(2) The Registrar may, on the application of a reporting company, authorise the company to omit specified information from its financial statements if the Registrar reasonably believes that disclosure of the information would be detrimental to the company.

Financial statements to be filed

76D.(1) A reporting company shall, no later than five months after its balance date, file—

- (a) a copy of its financial statements;
- (b) if applicable, a financial return in the prescribed form; and
- (c) such other documents relating to its financial position as may be prescribed.

DIVISION 2B

Declaration of Solvency

Application of this Division

76E.(1) Subject to subsection (2), this Division applies to a business company if it is not a large company.

(2) This Division does not apply to a business company specified in section 76A(2).

Declaration of solvency to be prepared and filed

76F. (1) A business company to which this Division applies shall, no later than five months after its balance date, file a declaration of solvency in the prescribed form that is dated and signed by two directors of the company or, if the company only has one director, by that director, certifying that the directors are satisfied, on reasonable grounds, that the company satisfies the solvency test at the date of the certificate.

(2) For the purposes of this section, "solvency test" means the solvency test specified in section 46(3).

(3) A director of a business company who signs or files or concurs in the filing of a declaration of solvency which contains a statement that is false, misleading or deceptive or an opinion that the director has no reasonable ground to believe to be accurate, commits an offence and is liable as specified in the Schedule.

(4) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the filing of the declaration the person believed on reasonable grounds that this section had been complied with.

(5) A business company that contravenes subsection (1) commits an offence and is liable as specified in the Schedule."

Amendment of section 85 38. Section 85 of the principal Act is amended by inserting after subsection (2), the following subsection—

“(3) If the directors of a company delegate their powers to a committee of directors under subsection (1), they remain responsible for the exercise of that power by the committee, unless the directors—

- (a) believed on reasonable grounds that at all times before the exercise of the power the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act and the articles; and
- (b) have taken reasonable steps to monitor the exercise of the power by the committee.”

Repeal and substitution of section 86 39. Section 86 of the principal Act is repealed and the following substituted—

“ P e r s o n s
disqualified for
appointment as
director

86. (1) The following are disqualified for appointment of a business company—

- (a) an individual who is disqualified from incorporating or joining in the incorporation of a business company under section 4(2);
- (b) an individual who is disqualified under section 67 of the Companies Act from being a director of a company incorporated or continued under that Act.

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(2) A person who acts as a director of a business company whilst disqualified under subsection (1) is

nevertheless deemed to be a director of the company for the purposes of any provision of this Act that imposes a duty or obligation on a director.

(3) An individual who accepts appointment as, or acts as, a director of a business company while disqualified under subsection (1)(b) commits an offence and is liable as specified in the Schedule.”.

40. Section 88 of the principal Act is amended by inserting after subsection (1) the following— Amendment of section 88

“(1A) If, before a business company has any members, a sole director, or all the directors appointed under subsection (1), resign or die, or in the case of a director that is not an individual, ceases to exist, the registered agent may appoint one or more persons as directors of the company.”.

41. The principal Act is amended by inserting after section 90, the following— Insertion of section 91A

“Requirement to file details of directors

91A. (1) The registered agent of a business company shall file a notice of appointment of directors in the prescribed form within ten days of appointing one or more directors under section 88.

(2) A business company shall file a notice in the prescribed form of—

- (a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

(b) a change in the name or address of a director of the company.

(3) A notice under subsection (2) shall be filed within ten days of—

(a) the change occurring, in the case of the appointment of a director or a director ceasing to hold office; or

(b) the business company first becoming aware of the change, in the case of the death of a director or a change in the name or address of a director.

(4) A registered agent who fails to comply with subsection (1) commits an offence and is liable as specified in the Schedule.

(5) A business company that fails to comply with subsection (2) or (3) commits an offence and is liable as specified in the Schedule.”.

Amendment of section 94

42. Section 94 of the principal Act is amended—

(a) by repealing subsection (2); and

(b) in subsection (3), by inserting after “this Act”, the words “or the Regulations”.

Amendment of section 100

43. Section 100 of the principal Act is amended—

(a) by designating the existing provisions as subsection (1); and

(b) by inserting after the newly designated subsection (1), the following—

“(2) Subsection (1) applies only if the director—

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that the director's reliance is unwarranted."

44. Section 104(1) of the principal Act is amended by inserting after "meeting of directors", the words "and the notice shall include the date, time and place of the meeting and the matters to be discussed at the meeting".

Amendment of section 104

45. Section 139 of the principal Act is amended by repealing subsections (2) and (3).

Amendment of section 139

46. Section 172 of the principal Act is amended by repealing subsection (1) and substituting the following—

Amendment of section 172

"(1) The Registrar may strike a business company off the Register if—

- (a) the company—
 - (i) does not have a registered agent;
 - (ii) fails to file any return, notice or document required to be filed under this Act or the Regulations;
- (b) the Registrar is satisfied that—
 - (i) the company has ceased to carry on business; or
 - (ii) the company is carrying on business for which a licence, permit or authority is required under the laws of the State without having such licence, permit or authority; or
- (c) the company fails to pay any fee or penalty payable under this Act or the Regulations by the due date.

(1A) If the Registrar is of the opinion that the company is trading or has property or that there is some other reason why the company should not be struck off the Register, the Registrar may, instead of striking the company from the Register, refer the company to the Authority for investigation.”.

Amendment of section 174 47. Section 174 of the principal Act is amended by inserting after subsection (3), the following—

“(4) If the business company has been struck off the Register under section 172(1)(a)(i), the Registrar shall not restore the company to the Register unless he is satisfied that—

- (a) a person who holds a relevant licence has agreed to act as registered agent of the company; and
- (b) it would be fair and reasonable for the company to be restored to the Register.”.

Insertion of Part XIA 48. The principal Act is amended by inserting after section 179, the following—

“PART XIA

Investigation of Business Companies

“Definition of “inspector” 179A.(1) In this Part, “inspector” means an inspector appointed by an order made under section 179B.

Investigation order 179B.(1) A member of a business company or the Registrar may apply to the Court *ex parte* or on the notice that the Court may require, for an order that the company and any of its affiliates be investigated.

(2) If, on an application under subsection (1), it appears to the Court that—

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud;
- (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) a person who is concerned with the incorporation, business or affairs of the company or any of its affiliates has in connection with the company or any of its affiliates acted fraudulently or dishonestly; or
- (d) it is in the public interest that an investigation of the company be made;

the Court may make any order it considers appropriate with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

- (3) If a member makes an application under subsection (1)–
 - (a) the member shall give the Registrar reasonable notice of the application; and

(b) the Registrar is entitled to appear and be heard at the hearing of the application.

(4) An applicant under this section is not required to give security for costs.

Court's powers

179C.(1) An order under section 179B(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) The Court may, make an order it considers appropriate with respect to the investigation, including an order to—

- (a) replace the inspector;
- (b) determine the notice to be given to an interested person, or dispense with notice to a person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there may be relevant information and to examine anything, and to make a copy of a document or record found on the premises;
- (d) require a person to produce a document or record to the inspector;
- (e) authorise the inspector to conduct a hearing, administer an oath or affirmation and examine a person on oath or

affirmation and prescribe rules for the conduct of the hearing;

- (f) require a person to attend a hearing conducted by the inspector and to give evidence on oath or affirmation;
- (g) give directions to the inspector or an interested person on a matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published and if so, order the Registrar to publish the report or an extract from the report or send a copy of the report or an extract from the report to a person the Court designates;
- (j) require an inspector to discontinue an investigation; or
- (k) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of each report he makes under this section.

(4) The Registrar may disclose a report filed under subsection (3) to a person only in accordance with an

order of the Court made under subsection (2)(i).

I n s p e c t o r ' s 179D. (1) An inspector—
powers

- (a) has the powers set out in the order appointing him; and
- (b) shall give an interested person a copy of the order on request.

Hearing in camera

179E. (1) An application under this Part and subsequent proceedings including an application for directions in respect of a matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part—

- (a) may appear and be heard at the hearing; and
- (b) is entitled to be represented by an attorney-at-law appointed by him for the purpose.

(3) A person shall not publish a matter relating to proceedings under this Part unless authorised by the Court.

(4) A person who contravenes subsection (3) commits an offence and is liable as specified in the Schedule.

Incriminating evidence 179F. A person is not excused from attending a hearing conducted by, and giving evidence and producing documents and records to, an inspector appointed by the Court under this Part solely because the evidence may incriminate that person or subject him to any proceeding or penalty, but the evidence shall not be used or received against that person in any later proceeding instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege 179G (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.
(2) Nothing in this Part affects the legal privilege that exists in respect of an attorney and the attorney's client.”.

49. Part XII of the principal Act is repealed and the following substituted—

Amendment of
Part XII

“PART XII

Exemptions

Exemptions 180. (1) No estate, inheritance, succession or gift tax is payable by persons who are not persons resident or domiciled in the State with respect to any shares, debt obligations or other securities of a business company.

(2) Notwithstanding any provisions of the Stamp Act to the contrary, the

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following are exempt from the payment of stamp duty —

- (a) any instrument relating to a transfer of property other than real property situate in the State to or by a business company;
- (b) any instrument relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act;
- (c) any instrument relating in any way to the assets or activities of a business company; and
- (d) any instrument relating to the legalisation of any document pertaining to a business company.

(3) Notwithstanding any contrary provisions of the Customs Duties Act, a business company shall be exempt from import duties pertaining to the importation into the State of any office furniture or equipment necessary for conducting its business.

(4) A business company shall, upon its incorporation or continuation, at no additional costs to the company, receive from the Registrar, a certificate confirming that the company shall be exempt from the

import duties specified in this section.

(5) Nothing in this section shall exempt a business company from fees or increases in fees charged under or pursuant to this Act or from any taxes arising by virtue of the company owning real property situate in the State.”.

50. The principal Act is amended by repealing section 184. Repeal section 184
51. The principal Act is amended by inserting after the repealed section 184, the following— Insertion of section 184A
- “Filing of returns, notices and documents 184A. A business company shall file such returns, notices and documents as may be prescribed.”.
52. Section 185(1) of the principal Act is amended by inserting after “in this Act”, the words “or the Regulations”. Amendment of section 197
53. Section 197(1) of the principal Act is amended— Amendment of section 185
- (a) by deleting “but not for the purposes of taxation”; and
- (b) by deleting “an inter-national business company” and substituting “a business company”.
54. The principal Act is amended by inserting after section 199, the following— Insertion of 199A
- “Preservation of existing law for business company incorporated before the 1st day of January 2019 199A.(1) Subject to subsection (2), this Act shall continue to apply up to 30 June 2021 to a business company on the register before 1 January 2019 as if the provisions of this Act have not been amended on the commencement of this section.
- (2) Notwithstanding subsection (1), this act as amended on the commencement of this section shall apply to —
- (a) intellectual property assets acquired, or newly created,

by a business company on or after 1 January 2019; and

(b) income derived from –

(i) the Intellectual property assets referred to in paragraph (a);

(ii) specific assets acquired by a business company on or after 1 January 2019; or

(ii) specific projects commenced by a business company on or after 1 of January 2019.

(3) In this section “intellectual property asset” means an intellectual property right including a copyright, a design right, patent and trademark and includes technical know-how, service marks, brand or image rights, performers rights.”.

Amendment of the Schedule

55. The Schedule is amended by inserting the following in the appropriate numerical position in column 1 of the table of “Offences and Penalties” –

COLUMN 1	COLUMN 2	COLUMN 3 \$	COLUMN 4
54A(5)	Business company failing to comply with requirements of section relating to filing details of members	20,000	
68(9)	Business company failing to have a registered agent or appointing a person who does not hold a relevant licence as its registered agent	25,000	

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
70(4)	Business company failing to comply with requirements of subsection (1), (2) or (3) of section	20,000	
71(4)	Business company failing to comply with requirements of subsection (1), (2) or (3) of section	20,000	
72(6)	Business company failing to comply with requirements of section	20,000	
73(4)	Business company failing to comply with requirements of section	20,000	
76F(3)	Director of business company signing or filing or concurring in the filing of a declaration of solvency containing statement that is false, misleading or deceptive or opinion that director has no reasonable ground to believe to be accurate	50,000	
76F(5)	Business company failing to file declaration of solvency as required by subsection (1) of section	20,000	
86(3)	Individual accepting appointment as, or acting as director while disqualified	20,000	

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
91A(4)	Registered agent failing to file notice of appointment of first directors	20,000	
91A(5)	Business company failing to file notice of change of directors within period specified in subsection (2)	20,000	
179E(4)	Person publishing a matter relating to proceedings under Part XIA without being authorised by Court	40,000	

Passed in the House of Assembly this 27th day of December, 2018.

NICOLE HERBERT
Clerk of the House of Assembly.

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