

PART IX
WINDING-UP, DISSOLUTION AND STRIKING-OFF

89. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon expiration of such time as may be prescribed by its Memorandum or Articles for its existence or upon the happening of an event which has been specified in the Memorandum or Articles as an event that shall terminate the existence of the company.

90.(1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

(2) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.

91. Upon the commencement of a winding-up and dissolution required under section 89 or permitted under section 90, the directors may only

(a) authorize a liquidator, by a resolution of directors, to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and

(b) determine to rescind the articles of dissolution as permitted under paragraph (a) of subsection (1) of section 95.

92.(1) A liquidator shall, upon his appointment in accordance with this Part, and upon the commencement of a winding-up and dissolution, proceed

(a) to identify all assets of the company;

(b) to identify all creditors of and claimants against the company;

(c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

(d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;

(e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) to send a copy of the statement of account to all members if so required by the plan of dissolution required by section 94.

(2) A transfer, including a prior transfer, described in subsection (2) of section 9 of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of paragraphs (c) and (d) of subsection (1).

93. In order to perform the duties imposed on him under section 92, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power

(a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;

(b) to sell any assets of the company at public auction or by private sale without any notice;

(c) to collect the debts and assets due or belonging to the company;

(d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

(e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;

(f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;

(g) to retain solicitors, accountants and other advisers and appoint agents;

(h) to carry on the business of the company, if the liquidator has received authorization to do so in the plan of liquidation or by a resolution of directors permitted under section 91, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

(i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

(j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding paragraph (h) of subsection (1), a liquidator shall not, without the permission of the court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.

94.(1) The directors of a company required under section 89 or proposing under section 90 to wind up and dissolve the company must approve a plan of dissolution containing

(a) a statement of the reason for the winding-up and dissolving;

(b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;

(c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;

(d) a statement of the estimated time required to wind up and dissolve the company;

(e) a statement as to whether the liquidator is authorized to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company;

(f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and

(g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding-up and dissolution is being effected in a case where subsection (2) of section 90 is applicable,

(a) the plan of dissolution must be authorized by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;

(b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and

(c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors, and if required, by the members in accordance with subsection (2), articles of dissolution must be executed by the company and must contain

(a) the plan of dissolution; and

(b) the manner in which the plan of dissolution was authorized.

(4) Articles of dissolution must be submitted to the Registrar who must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company must cause to be published, in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office, a notice stating

(a) that the company is in dissolution;

(b) the date of commencement of the dissolution; and

(c) the names and addresses of the liquidators.

(5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall

(a) strike the company off the Register; and

(b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

(7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved

(a) the certificate is prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and

(b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, a notice that the company has been dissolved and has been struck off the Register.

(9) A company that wilfully contravenes subsection (4) is liable to a penalty of \$50.00 for every day or part thereof during which the contravention continues, and a director or liquidator who knowingly permits the contravention is liable to a like penalty.

95.(1) In the case of a winding-up and dissolution permitted under section 90, a company may, prior to submitting to the Registrar a notice specified in subsection (4) of section 94, rescind the articles of dissolution by

a) a resolution of directors in the case of a winding-up and dissolution under subsection (1) of section 90; or

(b) a resolution of members in the case of a winding-up and dissolution under subsection (2) of section 90.

(2) A copy of a resolution referred to in subsection (1) must be submitted to the Registrar who must retain and register it in the Register.

(3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office.

96.(1) Where (a) the directors or, as the case may be, the members of a company that is required under section 89 or permitted under section 90 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or

(b) the liquidator after his appointment has reason so to believe, then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

(2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding up and dissolution and those provisions shall apply mutatis mutandis to the winding-up and dissolution of the company.

97.(1) Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the court under any of the circumstances, in so far as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act may be wound up by the court and, in that case, the provisions of the Companies Act relating to winding-up and dissolution apply mutatis mutandis to the winding-up and dissolution of the company.

(2) Any person who, pursuant to the provisions of subsection (1), files, or causes to be filed, a petition for the winding up of a company incorporated under this Act, shall forthwith serve on the Registrar a notice that the petition has been filed, and the Registrar must retain and register the notice.

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

(2) This section comes into operation on such date as the Governor may appoint by proclamation published in the Gazette.

99.(1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business Company under section 5, the Registrar must serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), he must serve on the company another notice

that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.

(3) If the Registrar

(a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or

(b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection, he must publish a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.

(4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck-off, and the Registrar must publish notice of the striking-off in the Gazette.

(5) If a company fails to pay the increased licence fee due under subsection (3) of section 105 on or before the expiration period of a period of 2 months from the time specified in subsection (1) or (2), as the case may be, of section 105, the Registrar shall within 2 months from the expiration of the said period of 2 months send to the registered agent of the company a written notice that the name of the company will be struck off the Register if the licence fee specified in subsection (4) of section 105 is not paid on or before the next licence fee final payment date.

(6) If a company fails to pay the increased fee stated in the notice referred to in subsection (5) at or before the next licence fee final payment date, the Registrar shall strike the name of the company off the Register on the date immediately following the next licence fee final payment date.

(7) Within one month following each licence fee final payment date, the Registrar shall send to the registered agent of each company the name of which has been struck off the Register notice of striking off.

(8) Within two months following each licence fee final payment date the Registrar shall publish in the Gazette the names of all companies struck off the Register on the date immediately following the licence fee final payment date.

(9) A company the name of which has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

(10) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the Gazette.

(11) Subsections (5) to (8) do not apply to a company in the process of being wound up and dissolved.

100.(1) If the name of a company has been struck off the Register under subsection name of the company, or a creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register.

(2) If upon an application under subsection (1) the court is satisfied that

(a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company under section 5, and

(b) it would be fair and reasonable for the name of the company to be restored to the Register, the court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees due under Section 104 and all licence fees due under section 105 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3) If the name of a company has been struck off the Register under subsection (6) of section 99, the company, or a creditor, member or liquidator thereof, may, within 10 years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register, and upon payment of

(a) all fees due under section 104;

(b) the increased licence fee due under subsection (3) of section 105; and

(c) the increased licence fee due under subsection (3) of section 105 for each year during which the name of the company remains struck off the Register,

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

(3A) If the name of a company has been struck off the Register under subsection (5) or subsection (6) of section 40A, the company, or a creditor, member or liquidator thereof, may apply to the Registrar to have the name of the company restored to the Register.

(3B) If upon an application under subsection (3A) the Registrar is satisfied that

(a) a licensed person has agreed to act as registered agent of the company; and

(b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon satisfaction of the conditions set forth in subsection (3C) and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

(3C) The conditions referred to in subsection

(3B) are as follows:

(a) the submission to the Registrar by the applicant for the restoration of a copy of the resolution amending the Memorandum of the company to change the registered agent; and

(b) payment to the Registrar by the applicant for the restoration of:

(i) all fees due under section 104, and

(ii) all licence fees due under section 105 without increase for late payment.

(4) For purposes of this Part, the appointment of an official receiver under section 102 operates as an order to restore the name of the company to the Register.

101.(1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may

(a) make application for restoration of the name of the company to the Register;

(b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that the name of a company is struck off the Register does not prevent

(a) the company from incurring liabilities;

(b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or

(c) the appointment by the court of an official liquidator for the company under section 102.

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

103.(1) If the name of a company has been struck off the Register under section 99 and remains struck off continuously for a period of 10 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Crown to do so, apply to the court on or before the expiration of the period of 10 years to have the company put into liquidation and a person appointed by the court shall be the official liquidator thereof.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to

(a) identifying and taking possession of all assets of the company;

(b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and

(c) applying those assets that he recovers in the following order of priority:

(i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and

(ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.

(3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may as it considers reasonable confer on him.

(4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.

(5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Crown and the company is dissolved.

(6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.

(7) No liability attaches to an official liquidator.

(a) to account to creditors of the company who have not submitted claims within the time allowed by him; or

(b) for any failure to locate any assets of the company.