

PART VI
PROTECTION OF MEMBERS AND CREDITORS

59.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside the British Virgin Islands as the directors consider necessary or desirable.

(2) Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

(3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if

(a) he participates by telephone or other electronic means; and

(b) all members participating in the meeting are able to hear each other.

(4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

(5) The following apply in respect of joint ownership of shares;

(a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;

(b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and

(c) if 2 or more are present in person or by proxy, they must vote as one.

60.(1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall not give less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 28 and are entitled to vote at the meeting;

(2) Notwithstanding subsection (1), and subject to any limitations or provisions to the contrary in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 per cent majority, or such lesser majority as may be specified in the Memorandum of Articles, of

(a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or

(b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes, have waived notice of the meeting; and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

61. The quorum for meeting of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy one-half of the votes of the shares of each class or series of shares entitled to vote as a class or series thereon and the same proportion of the votes of the remaining shares entitled to vote thereon.

62.(1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

(2) The directors of a company incorporated under this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

62A.(1) One or more members of a company incorporated under this Act may by agreement in writing deposit bearer shares with, or transfer registered shares to, any person authorized to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply:

(a) the period of time for which the trustee may vote shall not exceed 10 years;

(b) subject to paragraph (a), the agreement may contain any other provisions not inconsistent with the purpose of the agreement;

(c) a copy of the agreement shall be filed at the registered office of the company and shall be open to the inspection of members of the company

(i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and

(ii) in the case of members of the company, subject to the provisions of section 67;

(d) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;

(e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby in the case of registered shares and the certificates in case of bearer shares are held by the person named therein pursuant to an agreement;

(f) there shall be noted in the share register of the company against the record of the shares held by the trustee the fact that such an agreement exists;

(g) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;

(h) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;

(i) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;

(j) at any time within 2 years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended; and

(k) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as

originally fixed or as previously extended, as the case may be, file at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.

(2) Two or more members of a company incorporated under this Act may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted

(a) as provided by the agreement;

(b) as the parties may agree; or

(c) as determined in accordance with such procedure as they may agree upon.

(3) No agreement made pursuant to subsection (2) shall be effective for a period of more than 10 years from the date it is made, but at any time within the 2 years immediately preceding the date of the expiration of the agreement the parties may extend its duration for an additional period, not exceeding 10 years at any one time, as they may desire.

(4) The validity of any voting trust or other voting agreement is not affected during a period of 10 years from the date when it was created or last extended by reason only of the fact that under its terms, it will or may last beyond a period of 10 years.

(5) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.

63. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

64.(1) Any notice, information or written statement required under this Act to be by a company incorporated under this Act to members must be served

(a) in the case of members holding registered shares,

(i) in the manner prescribed in the Memorandum or Articles, as the case may be, or

(ii) in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the share register; and

(b) in the case of members holding shares issued to bearer, in the absence of a provision in the Memorandum or Articles, or if the notice, information or written statement can no longer be served as specified in the Memorandum and Articles, if the notice, information or written statement is published in a newspaper circulated in the British Virgin Islands and a newspaper in the place where the company has its principal office.

(2) Subject to a requirement in the Memorandum or Articles to give a specific length of notice, the directors must give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

(3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

65.(1) Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it, by registered mail, addressed to the company, at its

registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement

(a) was mailed in such time as to admit its being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

66.(1) A company incorporated under this Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) A company incorporated under this Act shall keep

(a) minutes of all meetings of

i) directors,

(ii) members,

(iii) committees of directors,

(iv) committees of officers, and

(v) committees of members; and

(b) copies of all resolutions consented to by

(i) directors,

(ii) members,

(iii) committees of directors,

(iv) committees of officers, and

(v) committees of members.

(3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other place as the directors determine.

(3A) A company incorporated under this Act shall have a common seal and an imprint thereof shall be kept at the registered office of the Company.

(4) A company that wilfully contravenes this section is liable to a penalty of \$25.00 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

67.(1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purpose to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the

member's interest as a member.

(3) If a request under subsection (1) is submitted by an attorney for a member, the request must be accompanied by a power of attorney authorizing the attorney to act for the member.

(4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.

(5) Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.

68.(1) Contracts may be entered into on behalf of a company incorporated over this Act as follows:

(a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;

(b) a contract that, if entered into between individuals is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and

(c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

(3) Without affecting paragraph (a) of subsection (1), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorized officer or agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

69.(1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).

(2) Within a reasonable time after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into 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, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and

(b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

70.(1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situate, is entered

into by a company incorporated under this Act and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property

(a) upon the death of a person making the designation;

(b) upon the death of another person; or

(c) upon the happening of any other event specified in the contract, agreement, deed or other instrument, then, any such payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

(2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that

(a) the designation is revocable or subject to change; or

(b) the claim or property

(i) is not yet payable or transferable, as the case may be, at the time the designation is made, or

(ii) is subject to withdrawal, collection or assignment by the person making the designation.

70A.(1) A company incorporated under this Act may create a mortgage, charge or other encumbrance over any of its assets situate in any part of the world in accordance with the law of any jurisdiction of the company's choice and the mortgage, charge or other encumbrance shall be binding on the company to the extent, and in accordance with, the requirements, of the chosen law.

(2) A company incorporated under this Act may maintain at its registered office a register of mortgages, charges and other encumbrances in which there shall be entered particulars regarding each mortgage, charge and other encumbrances as follows:

(a) the sum secured;

(b) the assets secured;

(c) the name and address of the mortgagee, chargee or other encumbrancer;

(d) the date of creation of the mortgage, charge or other encumbrance; and

(e) the date on which the particulars specified in paragraphs (a) to (d) in respect of the mortgage, charge or other encumbrance are entered in the register.

(3) In the event that an application is made to a court in the British Virgin Islands to enforce any mortgage, charge or other encumbrance created by a company incorporated under this Act and there are assets of the company which are subject to two or more mortgages, charges or other encumbrances, then, notwithstanding the provisions of any other law, priorities shall be determined in accordance with the dates of entry in the register of mortgages and charges; and, unregistered mortgages, and other encumbrances created after 1st January, 1991 shall rank after registered mortgages, charges and other encumbrances, but unregistered mortgages, charges and other encumbrances created prior to 1st January 1991 shall have priority over mortgages, charges and other encumbrances registered pursuant to this provision and shall rank in order of their creation.

71. A promissory note of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company

(a) by or on behalf or on account of the company; or

(b) by a person acting under the express or implied authority of the company; and if so endorsed, the person signing the endorsement is not liable thereon.

72.(1) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorize a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

73.(1) A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorized officer or agent of the company, and need not be under its common seal.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.

74.If at any time there is no member of a company incorporated under this Act, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefore without joinder in the proceedings of any other person.