

**PART VII
MERGER, CONSOLIDATION, SALE OF ASSETS,
FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS.**

75. In this Part,

"consolidated company" means the new company that results from the consolidation of 2 or more constituent companies;

"consolidation" means the uniting of 2 or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;

"merger" means the merging of 2 or more constituent companies into one of the constituent companies;

"parent company" means a company that owns at least 90 per cent of the outstanding shares of each class and series of shares in another company;

"subsidiary company" means a company at least 90 per cent of whose outstanding shares of each class and series of shares are owned by another company;

"surviving company" means the constituent company into which one or more other constituent companies are merged.

76.(1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).

(2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5), if the surviving company or the consolidated company will satisfy the requirements prescribed for an International Business Company under section 5.

(3) The directors of each constituent company that proposes to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case requires,

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) in respect to each constituent company,

(i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

(d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and

(e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(4) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

(5) The following apply in respect of a merger or consolidation under this section:

(a) the plan of merger or consolidation must be authorized by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;

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

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

(d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation must be executed by each company and must contain

(i) the plan of merger or consolidation and, in the case of a consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;

(ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;

(iii) the manner in which the merger or consolidation was authorized with respect to each constituent company;

(e) the articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register; and

(f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.

(6) A certificate of merger or consolidation issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

77.(1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act, without the authorization of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company under section 5.

(2) The directors of the parent company must approve a written plan of merger containing

(a) the name of each constituent company and the name of the surviving company;

(b) in respect to each constituent company,

(i) the designation and number of outstanding shares of each class and series of shares, and

(ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof must be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger must be executed by the parent company and must contain

(a) the plan of merger;

(b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar; and

(c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.

(6) The articles of merger must be submitted to the Registrar who must retain and register them in the Register.

(7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.

(8) A certificate of merger issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger.

78.(1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date consolidation subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective

(a) the surviving company or the consolidated company in so far as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

(b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;

(c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;

(d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated

company; and

(e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.

(3) Where a merger or consolidation occurs

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and

(b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but

(i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or

(ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

(4) The Registrar shall strike off the Register

(a) a constituent company that is not the surviving company in a merger; or

(b) a constituent company that participates in a consolidation.

79.(1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside the British Virgin Islands in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the British Virgin Islands are incorporated.

(2) The following apply in respect of a merger or consolidation under this section:

(a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside the British Virgin Islands shall comply with the laws of that jurisdiction; and

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the British Virgin Islands, it must submit to the Registrar

(i) an agreement that a service of process may be effected on it in the British Virgin Islands in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;

(ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);

(iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and

(iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate

authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under Section 76 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 76 except in so far as the laws of the other jurisdiction otherwise provide.

(4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

80. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, any sale, transfer, lease, exchange or other disposition other than a mortgage, charge or other encumbrance or the enforcement thereof of more than 50 per cent of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described in subsection (2) of section 9, if not made in the usual or regular course of the business carried on by the company, shall be made as follows:

(a) the proposed sale, transfer, lease, exchange or other disposition must be approved by the directors;

(b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorized by a resolution of members;

(c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and

(d) if it is proposed to obtain the written consent of members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

81.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles,

(a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and

(b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series, on a merger or consolidation under section 76, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

(2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

(3) The company must give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

82.(1) In this section, "arrangement" means

(a) an amendment to the Memorandum or Articles;

(b) a reorganization or reconstruction of a company incorporated under this Act;

(c) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;

(d) a separation of two or more businesses carried on by a company incorporated under this Act;

(e) any sale, transfer, exchange or other disposition of any part of the property, assets or business of a company incorporated under this Act to any person in exchange for shares, debt obligations or other securities of that other person, or money or other property, or a combination thereof;

(f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company incorporated under this Act held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;

(g) a winding-up and dissolution of a company incorporated under this Act; and

(h) any combination of any of the things specified in paragraphs (a) to (g).

(2) If the directors of a company incorporated under this Act determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement, even though the proposed arrangement may be authorized or permitted by any other provision of this Act or otherwise permitted.

(3) Upon approval of the plan of arrangement by the directors, the company must make application to the court for approval of the proposed arrangement.

(4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal must be given within the period of 20 days immediately following the date of the order, and in making the order the court may

(a) determine what notice, if any, of the proposed arrangement is to be given to any person;

(b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;

(c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 83;

(d) conduct a hearing and permit any interested person to appear; and

(e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall

(a) give notice to the persons to whom the order of the court requires notice to be given; and

(b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement must be executed by the company and must contain

(a) the plan of arrangement;

(b) the order of the court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.

(8) The articles of arrangement must be submitted to the Registrar who must retain and register them in the Register.

(9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the arrangement.

(11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

83.(1) A member of a company incorporated under this Act is entitled to payment of the fair value of his shares upon dissenting from

(a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;

(b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including

(i) a disposition pursuant to an order of the court having jurisdiction in the matter;

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or

(iii) a transfer pursuant to the power described in subsection (2) of section 9;

(d) a redemption of his shares by the company pursuant to section 81; and

(e) an arrangement, if permitted by the court.

(2) A member who desires to exercise his entitlement under subsection (1) must give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorized by written consent of members without a meeting.

(3) An objection under subsection (2) must include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within 20 days immediately following the date on which the vote of members authorizing the

action is taken, or the date on which written consent of members without a meeting is obtained, the company must give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent must, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating

(a) his name and address;

(b) the number and classes or series of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares; and a member who elects to dissent from a merger under section 77 must give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 77.

(6) A member who dissents must do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, must make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply:

(a) the company and the dissenting member shall each designate an appraiser;

(b) the 2 designated appraisers together shall designate a third appraiser;

(c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorizing the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

(d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 81 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 81 to redeem its shares.