

PART VIII CONTINUATION

84.(1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside the British Virgin Islands may, if it will satisfy the requirements prescribed for an International Business Company under section 5, continue as a company incorporated under this Act as follows:

(a) articles of continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved

(i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or

(ii) in such other manner as may be established by the company for exercising the powers of the company;

(b) the articles of continuation must contain

(i) the name of the company and the name under which it is being continued,

(ii) the jurisdiction under which it is incorporated,

(iii) the date on which it was incorporated,

(iv) the information required to be included in a Memorandum under subsection (1) of section 12, and

(v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;

(c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, and, in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, must be submitted to the Registrar who must retain and register them in the Register; and

(d) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(2) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

(3) Notwithstanding any provisions of the Companies Act, a company incorporated under that Act may, by resolution of the directors, continue the incorporation of the company under this Act.

(4) Where a company incorporated under the Companies Act has continued its incorporation under this Act, the Registrar shall strike the name of the company off the Register maintained under that Act and publish notice of the striking-off in the Gazette.

85.(1) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands that is permitted under section 84 to continue as a company incorporated under this Act, may, after complying with paragraphs (a) and (b) of subsection (1) of section 84, submit to the Registrar the following documents:

(a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English language, or if written in a language other than the English language accompanied by a certified translation into the English language; and

(b) a written authorization designating one or more persons who may give notice to the Registrar, by telex, telegram, cable or by registered mail, that the articles of continuation should become effective.

(2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar shall

(a) register the documents referred to in subsection (1) in the Register; and

(b) issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.

(4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorization.

(5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorization referred to in subsection (1) by delivering to the Registrar a written notice of rescission.

(6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorization within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the articles of continuation are rescinded.

(7) A company entitled to submit to the Registrar the documents referred to in subsection (1) may authorize the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.

86.A Certificate of continuation issued by the Registrar under paragraph (a) of subsection (1) of section 84 or under subsection (3) of section 85 is prima facie evidence of compliance with all requirements of this Act in respect of continuation.

87.(1) From the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85

(a) the company to which the certificate relates

(i) continues to be a body corporate, incorporated under this Act, under the name designated in the Articles of continuation,

(ii) is capable of exercising all powers of a company incorporated under this Act, and

(iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside the British Virgin Islands;

(b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;

(c) property of every description, including choses in action and the business of the company, continue to be vested in the company; and

(d) the company continues to be liable for all of its claims, debts, liabilities and obligations.

(2) Where a company is continued under this Act

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and

(b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

(3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.

(4) If at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act

(a) the provisions of the Memorandum and Articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;

(b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of the issue of the certificate of continuation, whichever is the sooner; and

(c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

88.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act and for which the Registrar would issue a certificate of good standing pursuant to subsection (1) of section 114, may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands in the manner provided under those laws.

(2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside the British Virgin Islands permit the continuation and the company has complied with those laws.

2A) The registered agent of a company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands may within 30 days of the continuation of the company under the laws of the foreign jurisdiction submit to the Registrar an affidavit to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction and the Registrar shall retain and register the affidavit.

(2B) Upon registration of the affidavit referred to in subsection (2A) the Registrar shall

(a) strike the name of the company off the Register;

(b) issue a certificate of discontinuance; and

(c) publish the striking off in the Gazette.

(3) Where a company incorporated under this Act is continued under the laws of a jurisdiction outside the British Virgin Islands

(a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;

(b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;

(c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and

(d) service of process may continue to be effected on the registered agent of the company in the British Virgin Islands in respect of any claim, debt, liability or obligation of the company during its existence as a company incorporated under this Act.