

**PART II**  
**CONSTITUTION OF COMPANIES**

3. Subject to the requirements of this Act, the registered agent named in the Memorandum may, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.

4. No company shall be incorporated under this Act unless immediately upon its incorporation the company is an International Business Company.

5.(1) For purposes of this Act, an International Business Company is a company that does not

(a) carry on business with persons resident in the British Virgin Islands;

(b) own an interest in real property situate in the British Virgin Islands, other than a lease referred to in paragraph (e) of subsection (2);

(c) carry on banking or trust business, unless it is licensed under the Banks and Trust Companies Act, 1990;

(d) carry on business as an insurance or reinsurance company, insurance agent or insurance broker, unless it is licensed under an enactment authorizing it to carry on that business;

(e) carry on the business of company management unless it is licensed under the Company Management Act, 1990; or

(f) carry on the business of providing the registered office or the registered agent for companies incorporated in the British Virgin Islands.

(2) For purposes of paragraph (a) of subsection (1), an International Business Company shall not be treated as carrying on business with persons resident in the British Virgin Islands by reason only that

(a) it makes or maintains deposits with a person carrying on banking business within the British Virgin Islands;

(b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within the British Virgin Islands;

(c) it prepares or maintains books and records within the British Virgin Islands;

(d) it holds, within the British Virgin Islands, meetings of its directors or members;

(e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained.

(f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or

(g) shares, debt obligations or other securities in the company are owned by any person resident in the British Virgin Islands or by any company incorporated under this Act or under the Companies Act.

6.(1) Without affecting the operation of section 99, if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business Company under section 5, or if having satisfied the requirements it subsequently ceases to satisfy the requirements for a continuous period of more than 30 days, the company shall upon expiration

of that period notify the Registrar of that fact.

(2) A company that wilfully contravenes subsection (1) is liable to a penalty of \$100.00 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.

7. Subject to section 74, no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in the British Virgin Islands, and except in so far as he may be liable for his own conduct or acts.

8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other law for the time being in force in the British Virgin Islands.

9.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, this Act or any other law for the time being in force in the British Virgin Islands, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:

- (a) issue registered shares or shares issued to bearer or both;
- (b) issue the following:
  - (i) voting shares,
  - (ii) non-voting shares,
  - (iii) shares that may have more or less than one vote per share,
  - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events, and
  - (v) shares that may be voted only when held by persons who meet specified requirements;
- (c) issue common shares, preferred shares, limited shares or redeemable shares;
- (d) issue shares that entitle participation only in certain assets;
- (e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;
- (g) purchase, redeem, or otherwise acquire and hold its own shares;
- (h) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (i) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company; and
- (j) issue shares in any one or more currencies.

(2) For purposes of paragraph (i) of subsection (1), notwithstanding any other provision of this Act or of any other law for the time being in force in the British Virgin Islands or any rule of law

to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity; and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

(3) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (2), and those rights or interests may be pleaded against any transferee in any such transfer.

10.(1) No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases:

(a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or

(b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorized act.

(2) For purposes of paragraph (a) of subsection (1), the court may set aside and prohibit the performance of a contract if

(a) the unauthorized act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;

(b) all the parties to the contract are parties to the proceedings; and

(c) it appears fair and reasonable to set aside or prohibit the performance of the contract;

and in so doing the court may, in applying this subsection, award to the company or to the other parties to the contract such compensation as may be reasonable except that in determining the amount of compensation the court shall not take into account anticipated profits to be derived from the performance of the contract.

11.(1) The word "Limited", "Corporation", "Incorporated", "Societe Anonyme" or "Sociedad Anonima" or the abbreviation "Ltd.", "Corp.", "Inc." or "S.A." must be part of the name of every company incorporated under this Act, but a company may use and be legally designated by either the full or the abbreviated form.

(2) No company shall be incorporated under this Act under a name that

a) is identical with that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent; or

(b) contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "Trust Company", "Trustee Company", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest

(i) the patronage of Her Majesty or that of a member of the Royal Family,

(ii) a connection with Her Majesty's Government or a department thereof, or

(iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter;

except with the approval of the Registrar in writing.

(c) is indecent, offensive, or, in the opinion of the Registrar, objectionable.

(3) A company may amend its Memorandum to change its name.

(4) If a company is incorporated under a name that

(a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act, or

(b) so nearly resembles the name as to be calculated to deceive; the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice, the Registrar must amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and the Registrar must publish notice of the change in the Gazette.

(5) Subject to subsections (2) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a certificate of incorporation indicating the change of name.

(6) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced against a company by its former name may be continued against it by its new name.

(7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for 90 days a name for future adoption by a company under this Act.

12.(1) The Memorandum must include

(a) the name of the company;

(b) the address within the British Virgin Islands of the registered office of the company;

(c) the name and address within the British Virgin Islands of the registered agent of the company;

(d) the objects or purposes for which the company is to be incorporated;

(e) the currency in which shares in the company shall be issued;

(f) a statement of the authorized capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorized to issue and the amount, if any, to be represented by shares without par value that the company is authorized to issue;

(g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;

(h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations, or restrictions of each class and series of shares that the company is authorized to issue, unless the directors are to be authorized to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;

(i) a statement of the number of shares to be issued as registered shares and the number of

shares to be issued as shares issued to bearer, unless the directors are authorized to determine at their discretion whether shares are to be issued as registered shares or to bearer, and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of directors;

- (j) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares;
- (k) if shares issued to bearer are authorized to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer; and

(l) a statement that the company may not carry on the activities set forth in subsection (1) of section 5 which statement shall set forth verbatim the activities described in that subsection, unless it is licensed to carry out any of the activities referred to in that subsection; and

(2) For purposes of paragraph (d) of subsection (1), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the British Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.

(3) The Memorandum must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.

(4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum, subject to this Act.

13.(1) The Memorandum, when submitted for registration, must be accompanied by Articles prescribing regulations for the company.

(2) The Articles must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.

(3) The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.

14.(1) The Registrar shall not register the Memorandum or the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and

(a) a solicitor engaged in the formation of the company; or

(b) the registered agent named in the Memorandum of the company to be registered agent, certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.

(2) Subject to subsection (1), the Registrar shall retain and register the Memorandum and Articles submitted to him in a Register to be maintained by him to be known as the Register of International Business Companies.

(3) Upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

15.(1) Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the

name contained in the Memorandum with the full capacity of an individual who is sui juris.

(2) A certificate of incorporation of a company incorporated under this Act issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of incorporation.

16.(1) Subject to any limitation or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.

(2) A company that amends its Memorandum or Articles must submit to the Registrar an extract of the resolution of members or the resolution of directors amending the Memorandum or Articles, as the case may be, certified as a true copy of the resolution amending the Memorandum or Articles by

(a) the solicitor engaged in advising the company; or

(b) the registered agent named in the Memorandum of the company, and the Registrar must retain and register the certified copy of the extract of the resolution.

(3) An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.

(4) A company that wilfully contravenes subsection (2) is liable to a penalty of \$50.00 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.

17. A copy of the Memorandum and a copy of the Articles must be given to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.