

PART III
CAPITAL AND DIVIDENDS

17A. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the unissued shares and treasury shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.

18. No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in section 19A.

19. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

19A.(1) The Memorandum or Articles, or agreement for the subscription of shares, of a company incorporated under this Act may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares of a company incorporated under this Act providing for the forfeiture of shares shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

(3) The written notice referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a notice has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

20.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

(2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

(3) R E P E A L E D.

21. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

21A.(1) The authorized capital, if any, of a company incorporated under this Act may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Registrar may issue guidelines with respect to the calculation of fees payable pursuant to section 104 for companies with an authorized capital stated in a currency other than United States dollars.

22.(1) Upon the issue by a company incorporated under this Act of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, upon the issue by a company incorporated under this Act of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(3) Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share is added to surplus.

23.(1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

(2) In the case of a dividend of authorized but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.

(3) In the case of a dividend of authorized but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

(4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionally smaller par value does not constitute a dividend of shares.

24.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum to increase or reduce its authorized capital, and in connection therewith, the company may

- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under paragraphs (a) and (b).

(2) Where a company reduces its authorized capital under subsection (1), then, for purposes of

computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.

(3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorized capital.

25.(1) A company incorporated under this Act may amend its Memorandum

(a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

(b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

26. Shares of a company incorporated under this Act are personal property and are not of the nature of real property.

27.(1) A company incorporated under this Act must state in its Articles whether or not certificates in respect of its shares shall be issued.

(2) If a company incorporated under this Act issues certificates in respect of its shares, the certificates

(a) must be signed by two directors or two officers of the company, or by one director and one officer; or

(b) must be under the common seal of the company, with or without the signature of any director or officer of the company; and the Articles may provide for the signatures or common seal to be facsimiles.

(3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is prima facie evidence of the title of the member to the share specified therein.

28.(1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing

(a) the names and addresses of the persons who hold registered shares in the company;

(b) the number of each class and series of registered shares held by each person;

(c) the date on which the name of each person was entered in the share register;

(d) the date on which any person ceased to be a member;

(e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and

(f) with respect to each certificate for shares issued to bearer,

(i) the identifying number of the certificate;

(ii) the number of each class or series of shares issued to bearer specified therein; and

(iii) the date of issue of the certificate; but the company may delete from the register information relating to persons who are no longer members or information relating to shares issued to bearer that have been cancelled.

(2) The share register may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) R E P E A L E D.

(4) A copy of the share register, commencing from the date of registration of the company, shall be kept at the registered office of the company referred to in section 38.

(5) The share register is prima facie evidence of any matters directed or authorized by this Act to be contained therein.

(6) 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.

29.(1) If (a) information that is required to be entered in the share register under Section 28 is omitted therefrom or inaccurately entered therein; or

(b) there is unreasonable delay in entering the information in the share register, a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the court for an order that the share register be rectified, and the court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the share register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered or omitted from the share register, whether the question arises between

(a) two or more members or alleged members; or

(b) between members or alleged members and the company;

and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the share register.

30.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

(2) In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.

(3) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the share register.

(4) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.

(5) A transfer of registered shares of a deceased, incompetent or bankrupt member of a company incorporated under this Act made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

(6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by the court after having regard to all the relevant evidence and the circumstances of the case.

31. A share issued to bearer is transferable by delivery of the certificate relating to the share.

32.(1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside the British Virgin Islands

(a) by or in connection with a nationalization, expropriation, confiscation, coercion, force or duress, or similar action; or

(b) by or in connection with the imposition of any confiscatory tax, assessment, or other governmental charge, takes or seizes any shares or other interests in a company incorporated under this Act, the company itself or a person holding shares or any other interest in the company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

(2) Without affecting subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the share or other interests in the company as the holder of those shares or other interests.

(3) The court may, upon application made to it under subsection (1) or (2),

(a) grant such relief as it considers equitable and proper; and

(b) order that any shares of or other interests in the company vest in such trustees as the court may appoint upon such trusts and for such purposes as the court determines.

33.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.

(1A) Subject to subsection (1), a company incorporated under this Act may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of

(a) the provisions of the Memorandum or Articles of the company;

(b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or

(c) the subscription agreement for the issue of the shares.

(2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the

company is conclusive, unless a question of law is involved.

(3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired,

(a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;

(b) by virtue of a transfer of capital pursuant to paragraph (b) (iii) of section 35(1);

(c) by virtue of the provisions of section 83; and

(d) pursuant to an order of the court.

(4) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital in a manner that would be a contravention of the requirements of section 35(3), in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

(5) A company incorporated under this Act may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of

(a) its Memorandum or Articles; or

(b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.

34. Where shares in a company incorporated under this Act

(a) are held by the company as treasury shares; or

(b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of the other company, the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the first Company.

35.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act may, by a resolution of members or by a resolution of directors be

(a) increased by transferring an amount out of the surplus of the company to capital; or

(b) reduced by transferring an amount out of capital of the company to surplus.

(2) R E P E A L E D.

(3) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of

(a) the aggregate par value of

(i) all outstanding shares with par value, and

(ii) all shares with par value held by the company as treasury shares; and

(b) the aggregate of the amounts designated as capital of

(i) all outstanding shares without par value, and

(ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(4) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.

36.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Dividends shall only be declared and paid out of surplus.

(3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend

(a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and

(b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.

37. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealized appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved.

37A.(1) A mortgage or charge of shares of a company incorporated under this Act must be in writing signed by, or with the authority of, the holder of the bearer share or the registered holder of the registered share to which the mortgage or charge relates.

(2) In the case of a bearer share, a mortgage or charge thereof is not valid and enforceable unless the certificate for the share to be mortgaged or charged is deposited with the mortgagee or chargee but the deposit of the certificate with the mortgagee or chargee shall not constitute a transfer of the bearer share, title to which shall only pass upon due compliance with the provisions of law governing realization of the security by the mortgagee or chargee.

(3) A mortgage or charge of shares of a company incorporated under this Act need not be in any specific form but it must clearly indicate

(a) the intention to create a mortgage or charge; and

(b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(4) A mortgage or charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other than the British Virgin Islands, but if a law other than the law of the British Virgin Islands is specified as the governing law

(a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and

(b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the Memorandum and the Articles of the company and this Act.

(5) If no law is specified to govern a mortgage or charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of the British Virgin Islands and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies:

(a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and

(b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may

(i) vote the shares,

(ii) receive dividends and other payments in respect of the shares, and

(iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares, until such time as the mortgage or charge is discharged.

(6) Subsection (5) also applies to a mortgage or charge of shares of a company incorporated under this Act where the law of the British Virgin Islands is specified as the governing law.

(7) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner:

(a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;

b) secondly, in discharging the sums secured by the mortgage or charge; and

(c) thirdly, in paying any balance due to the mortgagor or chargor.

(8) The remedies referred to in subsection (5) are not exercisable until

(a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and

(b) the default has not been rectified within 14 days from service of the notice specifying the default and requiring rectification thereof.

(9) In the case of the mortgage or charge of registered shares there may be entered in the share register of the company

(a) a statement that the shares are mortgaged or charged;

(b) the name of the mortgagee or chargee; and

(c) the date on which the statement and name are entered in the share register.