

PART V
DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS

42. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who shall be individuals or companies.

43.(1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.

(2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.

(3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles

(a) a director may be removed from office by a resolution of members or by a resolution of directors; and

(b) a director may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(4) Subject to any limitations or provision to the contrary in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

43A.(1) A company incorporated under this Act may keep a register to be known as a register of directors containing

(a) the names and addresses of the persons who are directors of the company;

(b) the date on which each person whose name is entered in the register was appointed as a director of the company; and

(c) the date on which each person named as a director ceased to be a director of the company.

(2) The register of directors may be in such form as the directors 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) A copy of the register of directors, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

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

44. The number of directors shall be fixed by the Articles and, subject to any limitations or provisions to the contrary in the Memorandum or Articles, the Articles may be amended to change the number of directors.

45. The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.

46. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the

directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

47.(1) The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under sections 43 and 53.

48.(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 meet at such times and in such manner and places within or outside the British Virgin Islands as the directors may determine to be necessary or desirable.

(2) A director shall be deemed to be present at a meeting of directors if

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

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

49.(1) Subject to a requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than 3 days notice of meetings of directors.

(2) Notwithstanding subsection (1), subject to any limitations or provisions to the contrary in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

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

50. The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.

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

52.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a director may by a written instrument appoint an alternate who need not be a director.

(2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

53.(1) The directors may, by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles or in the

resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under this Act.

(3) The resolution of directors appointing any person to be an agent of the company may authorize the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.

54.(1) Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

2) No provision in the Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Memorandum or Articles or from any personal liability arising from his management of the business and affairs of the company.

55. Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 28, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 66 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

56.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, no agreement or transaction between

(a) a company incorporated under this Act; and

(b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person, is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if

(a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and

(b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved

(i) without counting the vote or consent of any interested director or liquidator, or

(ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.

(3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if

(a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting of members; and

(b) the agreement or transaction is approved or ratified by a resolution of members.

(3A) subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid unless it is shown that at the time the agreement or transaction was authorized, approved or ratified by resolution of directors or by resolution of members the agreement or transaction was unfairly prejudicial to one or more members of the company or to the creditors of the company except that no person who voted in favour of the resolution authorizing, approving or ratifying the agreement or transaction shall be capable subsequently of impugning or objecting to the agreement or transaction.

(4) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 50 or otherwise.

57.(1) Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgments, fines, and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the company; or

(b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.

(4) The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

(5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

58.A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under subsection (1) of section 57.