

THE COMPANIES ORDINANCE 2000

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THE COMPANIES ORDINANCE 2000

An Ordinance to make provision for the incorporation and regulation of both resident and international business companies.

ENACTED by the Legislature of New Utopia.

1. Short title and commencement

This Ordinance may be cited as:

THE COMPANIES ORDINANCE 2000

and shall come into operation on such day as the Board of Governors may, by notice in the Gazette, appoint.

[Gazetted (Date) 2000]

PART I Preliminary

2. Definitions

(1) In this Ordinance

(a) "articles" means unless qualified

(i) the original or restated articles of incorporation, articles of amendment, articles of merger, articles of continuation, articles of reorganisation, articles of consolidation, articles of dissolution, articles of arrangement, and articles of revival, and

(ii) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as a company under this Ordinance;

(b) "authorised capital" of a company means the sum of the aggregate par value of all shares with par value which the company is authorised by its articles to issue plus the amount, if any, stated in its articles as authorised capital to be represented by shares without par value which the company is authorised by its articles to issue;

(c) "capital" of a company means the sum of the aggregate par value of all outstanding shares with par value of the company and shares with par value held by the company as treasury shares plus

(i) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares, and

(ii) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

(d) "company" means a company;

(e) "continued" means, unless the context otherwise requires, continued within the context of Part VIII;

(f) "Court" means the High Court of New Utopia or a Judge thereof;

(g) "dollar" means United States dollar unless otherwise specified;

(h) "foreign regulatory authority" means any authority in any jurisdiction which exercises any function which legally relates to and regulates banking, financial services, companies or insurance;

(i) "international business company" means a company that satisfies the requirements of section 4 and is incorporated under the provisions of this Ordinance;

(j) "Minister" means the Minister responsible for Finance;

(k) "person" includes a company, trust, partnership, a limited liability company or an unincorporated association of persons;

(l) "person resident in New Utopia" means a person who ordinarily resides within New Utopia or carries on business from an office or other fixed place of business within New Utopia but does not include a company;

(m) "Register" means the Register of International Business Companies maintained by the Registrar in accordance with section 9(3);

(n) "Registrar" means the New Utopia Registrar of Companies;

(o) "resident company" means a company that satisfies the requirements of both section 4 and part XII to this Ordinance;

(p) "securities" means shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

(q) "surplus", in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities as shown in the books of account, plus its capital;

(r) "treasury shares" means shares of a company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled.

(2) A reference in this Ordinance to voting in relation to shares shall be construed as a reference to voting by shareholders holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of shareholders who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.

(3) Unless otherwise defined in the articles or by-laws of a company, resolution of directors means

(a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority, or such larger majority as may be specified in the articles or by-laws, of the directors present at the meeting who voted and did not abstain, or

(b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the articles or by-laws, of all the directors or of all the shareholders of the committee, as the case may be,

but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

(4) Unless otherwise defined in the articles or by-laws of a company, the expression "resolution of shareholders" means

(a) a resolution approved at a duly constituted meeting of the shareholders of a company by the affirmative vote of

(i) a simple majority, or such larger majority as may be specified in the Articles or by-laws, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain, or

(ii) a simple majority, or such larger majority as may be specified in the articles or by-laws, of the votes of each class or series of shares which were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the articles or by-laws, of the votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or

(b) a resolution consented to in writing by

(i) an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of shares entitled to vote thereon, or

(ii) an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of each class or series of shares entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the articles or by-laws, of the votes of the remaining shares entitled to vote thereon.

(5) In this Ordinance any reference to another Ordinance or to a Regulation made under another Ordinance shall be deemed to include any statutory re-enactment or modification thereof.

PART II Constitution of Companies

3. Incorporation and jurisdiction

(1) Subject to this Ordinance, one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar.

(2) Companies incorporated under this Ordinance shall fall into three classes;

(a) companies who carry on business with persons resident in New Utopia, which

(i) shall be known as resident companies, and

(ii) shall, in addition to observing the provisions contained within parts I to XI of this Ordinance shall also observe those provisions contained within part XII to this Ordinance.

(b) companies who do not carry on business with persons resident in New Utopia, subject to the exclusions contained in section 4 of this Ordinance, which

(i) shall be known as international business companies, and

(ii) shall observe the provisions contained within parts I to XI of this Ordinance.

(c) companies which are either a resident companies or international business companies which offer or intend to offer any of their shares to the public shall for the purposes of this Ordinance be treated as resident companies and shall, in addition to observing the provisions contained within parts I to XI of this Ordinance shall also observe those provisions contained within part XII to this Ordinance.

(3) No individual who

(a) is less than 18 years of age;

(b) is of unsound mind and has been so found by a tribunal in New Utopia or elsewhere; or

(c) has the status of a bankrupt in New Utopia or elsewhere,

shall form or join in the formation of a company.

4. Restriction on incorporation

(1) No company shall be incorporated under this Ordinance unless it satisfies the following requirements; that it does not;

(a) carry on business with persons resident in New Utopia unless a resident company;

(b) carry on a banking or trust business within the meaning of The Banks and Trust Companies Ordinance 2000;

(c) carry on business as an insurance or a reinsurance company, insurance agent, insurance broker, or insurance manager within the meaning of The Insurance Companies Ordinance 2000;

(d) carry on the business of providing the registered office or acting as a registered agent for companies unless a resident company which has received the written consent of the Board of Governors to do so;

(e) issue any of its shares to the public unless a resident company.

(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 New Utopia by reason only of the fact that

(a) it makes or maintains deposits with a company incorporated in New Utopia which is carrying on a banking business within New Utopia;

(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 New Utopia;

(c) it prepares or maintains books and records within New Utopia;

(d) it holds, within New Utopia, meetings of its directors or shareholders;

(e) it holds property by way of rent or lease for use as an office from which to communicate with shareholders or where books and records of the company are prepared or maintained;

(f) it holds shares, debt obligations or other securities in another international business company or resident company incorporated under the laws of New Utopia;

(g) shares, debt obligations or other securities in the company are owned by any person resident in New Utopia or by any international business company or resident company incorporated under the laws of New Utopia; or

(h) it owns vessels or aircraft registered in New Utopia.

Without affecting the operation of section 93, if a company ceases to satisfy the requirements of section 4 for a continuous period of more than 30 days, the company shall upon expiration of that period notify the Registrar of that fact.

6. Personal liability

Subject to section 68, no shareholder, director, officer, agent or liquidator of a company is liable for any debt, obligation or default of the company, unless specifically provided in this Ordinance or in any other law for the time being in force in New Utopia, and except in so far as he may be liable for his own conduct or acts.

7. Name

(1) The word "Limited", "Corporation", "Proprietary", "Incorporated", "Society Anonyme", "Sociedad Anonima", "Besioten Vennootschap", "Gelleschaftmit beschränkter Haftung" "Naamloze Vennootschap" or the abbreviation "Ltd", "Corp", "Pty", "Inc", "S.A.", "B.V.", "GmbH", or "NV" must be part of the name of a company, but such company may use and may be legally designated by either the full or the abbreviated form.

(2) The name of a company

(a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, if the use of that name would be likely to confuse or mislead, unless the person, association, partnership or firm first incorporated consents in writing to the use of that name in whole or in part, and

(i) if required by the Registrar in the case of any person, undertakes to dissolve or change his or its name to a dissimilar name within 6 months after the filing of the articles by which the name is acquired, or

(ii) if required by the Registrar in the case of an association, partnership or firm, undertakes to cease to carry on its business or activities, or undertakes to change its name to a dissimilar name, within 6 months after the filing of the articles by which the name is acquired;

(b) shall not suggest or imply the patronage of His Royal Highness or any member of the Royal Family or connection with the Government of or any department thereof in New Utopia or elsewhere;

(c) shall not suggest or imply a connection with a political party or a leader of a political party;

(d) shall not suggest or imply a connection with an academic institution or a professional association recognised by the laws of New Utopia unless the academic institution or professional association concerned consents in writing to the use of the proposed name;

(e) shall not be a name reserved for any body incorporated under The Banks and Trust Companies Ordinance 2000 or The Insurance Companies Ordinance 2000; and

(f) shall not be a name that is considered as obscene or offensive or is calculated to deceive.

(3) A company may amend its articles 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 Ordinance, 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 shall amend the articles 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 120 days a name for future adoption by a company under this Ordinance.

(8) The Registrar may exempt a body corporate continued as a company under this Ordinance from the requirements of subsection (1).

(9) The decision of the Registrar shall be considered as final.

8. Articles of incorporation

(1) Articles of incorporation shall follow the approved form and set out, in respect of the proposed company,

- (a) its proposed name and class of company;
- (b) the address within New Utopia of its first registered office;
- (c) the name and address within New Utopia of its registered agent;
- (d) the classes and any maximum number of shares that the company is authorised to issue; and
 - (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; or
 - (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
- (e) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
- (f) any restrictions on the business that the company may carry on.

(2) The articles may set out any provisions permitted by the Ordinance or by law permitted to be set out in the by-laws of the company.

(3) Where the right to transfer any shares is restricted, a notification to that effect shall be given on each share certificate issued in respect of those shares.

9. Certificate of incorporation

(1) Upon receipt of articles of incorporation the Registrar shall issue a certificate of incorporation of the company, and the certificate is conclusive proof of the incorporation of the company named in the certificate.

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

(3) The Registrar shall keep a register to be known as the Register of Companies which shall contain such information as he thinks fit and such register shall not be open to public inspection other than by a Registered Agent insofar as he may search the index to the register for the purposes of determining names of companies available for incorporation.

10. Capacity and powers

(1) A company has the capacity, and, subject to any limitations in this Ordinance or any other law, all the rights, powers and privileges of an individual.

(2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction inside or outside New Utopia to the extent that this Ordinance, the laws of New Utopia and of that jurisdiction permit.

(3) It is not necessary for a by-law to be passed to confer any particular power on a company or its directors.

(4) This section does not authorise any international business company to carry on any business or activity in breach of

(a) any enactment prohibiting or restricting the carrying on of the business or activity, or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

11. Amendment of Articles

(1) Subject to any limitation in its articles or by-laws, a company may amend its articles by a resolution of shareholders or, where permitted by its articles or by-laws or by this Ordinance, by a resolution of directors.

(2) A company that amends its articles must submit a copy of the amendment to the Registrar.

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

12. Copies of articles and by-laws to shareholders

A copy of the articles and by-laws must be given to any shareholder who requests a copy on payment by the shareholder of such fee as the shareholders directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

13. Validity of acts

For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles.

PART III Share Capital and Dividends

14. Nature of shares

Shares in companies incorporated under this Ordinance may be either:

- (a) registered shares if the company is either a resident company or an international business company, or;
- (b) bearer shares if the company is an international business company.

15. Consideration

(1) A share shall not be issued in a company 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.

(2) Fractional shares shall not be permitted.

(3) Subject to any limitations in the articles or by-laws shares in a company

(a) 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;

(b) 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.

(4) A share issued by a company 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.

(5) Subject to articles or by-laws, treasury shares and unissued shares may be disposed of by a company on such terms and conditions as the directors may determine.

16. Capital and surplus accounts

(1) Upon the issue by a company 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 in its articles or by-laws, upon the issue by a company 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 of a treasury share, the consideration in respect of the share is added to surplus.

17. Dividend of shares

(1) A share issued as a dividend by a company 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 authorised 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 authorised 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 proportionately smaller par value does not constitute a dividend of shares.

18. Increase or reduction of capital

(1) Subject to its articles or by-laws a company may, by a resolution of directors, amend its articles or by-laws to increase or reduce its authorised 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 authorised 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 authorised capital.

19. Division and combination of shares

(1) A company may amend its articles or by-laws

(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.

20. Character of share

Shares of a company are personal estate and are not of the nature of real estate.

21. Share certificates

(1) The certificates for a company in respect of its shares

(a) must show the class of company issuing the shares;

(b) must be signed by a minimum of one director and one officer of the company;
and

(c) must be under the common seal of the company;

and the articles or by-laws may provide for the signatures or common seal to be facsimiles.

(2) A certificate issued in accordance with subsection (1) specifying a share held by a shareholder of the company is prima facie evidence of the title of the shareholder to the shares specified therein.

22. Share register

(1) A company shall maintain a register of shareholders showing

(a) the name and latest known address of each person who holds a registered share in the company;

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

(c) the date on which the name of each person was entered on the register as a shareholder;

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

(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 shareholders 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, optical or other data storage form, the company must be able to produce legible printed evidence of its contents.

(3) A copy of the share register, commencing from the date of the registration of the company, shall be kept at the registered office of the company.

(4) The share register is *prima facie* evidence of any matters directed or authorised by this Ordinance and these shall be contained therein.

23. Rectification of share register

(1) If

(a) information that is required to be entered in the share register under section 22 is omitted therefrom or inaccurately entered therein; or

(b) there is unreasonable delay in entering the information in the share register, a shareholder 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 in or omitted from the share register, whether the question arises between

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

(b) between shareholders or alleged shareholders and the company, and generally the court may in the proceeding determine any question that may be necessary or expedient to be determined for the rectification of share register.

24. Transfer of registered shares

(1) Subject to articles or by-laws, registered shares of a company 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 referred to 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 shareholder until the transferee's name has been entered in the share register.

(4) Subject to its articles or by-laws, a company 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 shareholder 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 shareholder 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 having regard to all the relevant evidence and the circumstances of the case.

25. Transfer of bearer shares

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

26. Seizure

(1) Unless the by-laws provide otherwise, where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside New Utopia

(a) by or in connection with a nationalisation, 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 interest in an international business company, 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 shares 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.

27. Acquisition of own shares

(1) Subject to any of its articles or by laws, a company 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.

(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 realisable value of the assets of the company will not be less than the sum of its total liabilities as shown in the books of account, and its capital,

and, in the absence of fraud, the decision of the directors as to the realisable 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 shareholder 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 29(1);

(c) by virtue of the provisions of section 77; and

(d) pursuant to an order of the court.

(4) Subject to its by-laws 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 29(2) 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.

28. Treasury shares disabled

Where shares in a company

(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 Ordinance except for purposes of determining the capital of the first company.

29. Increase or reduction of capital

(1) Subject to its articles or by-laws and subject to subsections (3) and (4), the capital of a company may, by a resolution of directors, be

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

(b) reduced by

(i) returning to shareholders any amount received by the company upon the issue of any of its shares, the amount being surplus to the requirements of the company,

(ii) cancelling any capital that is lost or not represented by assets having a realisable value, or

(iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire.

(2) 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.

(3) 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 realisable value of the assets of the company will not be less than its total liabilities 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 realisable value of the assets of the company is conclusive, unless a question of law is involved.

30. Dividends

(1) Subject to its articles or by-laws, a company may, by a resolution of its 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 realisable value of the assets of the company will not be less than the sum of its total liabilities as shown in the books of account, and its capital,

and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the company is conclusive, unless a question of law is involved.

31. Appreciation of assets

Subject to its articles or by-laws, a company may, by a resolution of directors, include in the computation of surplus for any purpose under this Ordinance the net unrealised 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.

PART IV Registered Office and Agent

32. Registered office

A company shall at all times have a registered office in New Utopia.

33. Registered agent

A company shall at all times have a registered agent in New Utopia.

34. Change of office or agent

A company may by a resolution of directors, amend its articles or by-laws to change the place of its registered office or to change its registered agent.

PART V Directors, Officers, Agents and Liquidators

35. Management by directors

Subject to its articles or by-laws, the business and affairs of a company shall be managed by a board of directors that consists of one or more persons who may be individuals or companies and who may be of any nationality or incorporated in any jurisdiction.

36. Organisational meeting

(1) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which the directors may

- (a) make by-laws;
- (b) adopt forms of share certificates and corporate records;
- (c) authorise the issue of shares;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving by post or any other similar means not less than 7 clear days notice of the meeting to each director and stating in the notice the time and place of the meeting.

37. Appointment of directors etc.

(1) The first directors of a company shall be selected by the persons who have formed the company and thereafter, the directors shall be elected by the shareholders or directors for such term as the shareholders or directors may determine.

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

(3) A director may:

- (a) be removed from office by a resolution of shareholders or by a resolution of directors; and

- (b) 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) A vacancy in the board of directors may be filled by a resolution of shareholders or of a majority of the remaining directors.

38. Number of directors

The number of directors shall be fixed by the articles or by-laws and the articles or by-laws may be amended to change the number of directors, but shall not be less than one.

39. Powers of directors

The directors have all the powers of the company that are not reserved to the shareholders under this Ordinance or by-laws.

40. Emoluments of directors

Subject to the articles or by-laws, 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.

41. Committees of directors

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

(2) Subject to its articles or by-laws, 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 37 and 47.

42. Meetings of directors

(1) Subject to the articles or by-laws, the directors of a company may meet at such times and in such manner and places within or outside New Utopia 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 or otherwise electronically communicate with each other in real time.

43. Notice of meetings of directors

(1) Subject to a requirement in the articles or by-laws to give longer notice, a director shall be given not less than one day's notice of meetings of directors.

(2) Notwithstanding subsection (1), but subject to its articles or by-laws, 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 articles or by-laws 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 a 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.

44. Quorum for meetings of directors

The quorum for a meeting of directors is that fixed by the articles or by-laws; 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.

45. Consent of directors

Subject to the articles or by-laws, 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.

46. Alternates for directors

(1) Subject to the articles or by-laws 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.

47. Officers and agents

(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 the articles or by-laws, 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 section 40 and this section.

(3) The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

48. Standard of care

(1) Every director, officer, agent and liquidator of a company, 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 articles or by-laws of a company 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 articles or by-laws or from any personal liability arising from his management of the business and affairs of the company.

49. Reliance on records and reports

Every director, officer, agent and liquidator of a company, in performing his functions is entitled to rely upon the share register kept under section 22, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 60 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.

50. Conflict of interests

(1) Subject to the articles or by-laws, if the requirements of subsection (2) or (3) are satisfied, no agreement or transaction between

(a) a company; 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) 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) 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 shareholders entitled to vote at a meeting of shareholders; and

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

(4) Subject to the articles or by-laws, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or shareholders may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 44 or otherwise.

51. Indemnification

(1) Subject to subsection (2) and to the by-laws a company may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings against 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 judgement, 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 judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

52. Insurance

A company 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 51.

PART VI Protection of Shareholders and Creditors

53. Meetings of shareholders

(1) Subject to the articles or by-laws, the directors of a company may convene meetings of the shareholders of the company at such times and in such manner and places within or outside New Utopia as the directors consider necessary or desirable.

(2) Subject to the articles or by-laws upon the written request of shareholders holding more than 50 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of shareholders.

(3) Subject to the articles or by-laws, a shareholder shall be deemed to be present at a meeting of shareholders if

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

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

(4) A shareholder may be represented at a meeting of shareholders by a proxy who may speak and vote on behalf of the shareholder.

(5) The following apply in respect of joint ownership of shares:

(a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of shareholders and may speak as a shareholder;

(b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and

(c) if two or more are present in person or by proxy, they must vote as one.

54. Notice of meetings of shareholders

(1) The directors shall give not less than 7 days notice of meetings of shareholders to those shareholders whose names on the date the notice is given appear as shareholders in the share register referred to in section 22 and are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), a meeting of shareholders held in contravention of the requirement to give notice is valid if shareholders holding a majority of

(a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or

(b) the votes of each class or series of shares where shareholders are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes, have waived notice of the meeting; and, for this purpose, the presence of a shareholder at the meeting shall be deemed to constitute a waiver on his part.

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

55. Quorums for meetings of shareholders

The quorum for a meeting of shareholders for purposes of a resolution of shareholders is that fixed by the articles or by-laws; but, where no quorum is so fixed a meeting of shareholders is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy one-half of the votes of the shares of each class or series thereon and the same proportion of the votes of the remaining shares entitled to vote thereon.

56. Voting by shareholders

(1) Except as otherwise provided in the articles or by-laws, all shares vote as one class and each whole share has one vote.

(2) The directors of a company may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

57. Consent of shareholders

Subject to the articles or by-laws, an action that may be taken by shareholders at a meeting of shareholders may also be taken by a resolution of shareholders consented to in writing or by telex, telegram, facsimile, cable or other written electronic communication, without the need for any notice.

58. Service of notice on shareholders

(1) Any notice, information or written statement required under this Ordinance to be given by a company to shareholders must be served

(a) in the case of shareholders holding registered shares,

(i) in the manner prescribed in the articles or by-laws, as the case may be, or

(ii) in the absence of a provision in the articles or by-laws, by personal service or by mail addressed to each shareholder at the address shown in the share register; and

(b) in the case of shareholders holding shares issued to bearer, in the absence of a provision in the articles or by-laws by publishing the notice, information or written statement in a newspaper circulated in New Utopia and a newspaper in the place where the company has its principal office if different.

(2) The directors must give sufficient notice of meetings of shareholders to shareholders holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

(3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

59. Service of process, etc. on company

(1) Any summons, notice, order, document, process, information or written statement to be served on a company may be served by leaving it, or by sending it by registered mail addressed to the company, at its registered office.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on a company may be proved by showing that the summons, notice, order, document, process, information or written statement

(a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

60. Books, records and common seal

(1) A company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

(2) A company shall keep

(a) minutes of all meetings of

(i) directors; and

(ii) shareholders,
and committees thereof.

(b) copies of all resolutions consented to by:

(i) directors; and
(ii) shareholders,
and committees thereof.

(3) The books, records and minutes required by this section shall be kept at the registered office of the company.

(4) A company shall have a common seal which shall be kept at the registered office of the company, and a duplicate of the common seal shall be allowed at any other location the company shall so decide.

61. Inspection of books and records

(1) A shareholder of a company may, in person or by attorney and in furtherance of a proper purpose, request in writing, specifying the purpose, to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the shareholders interest as a shareholder.

(3) If an attorney for a shareholder submits a request under subsection (1), the request must be accompanied by a power of attorney authorising the attorney to act for the shareholder.

(4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other shareholder of the company to comply with a request under subsection (1) the company may refuse the request.

(5) Upon refusal by the company of a request under subsection (1), the shareholder may, before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.

62. Contracts generally

(1) Contracts may be entered into on behalf of a company as follows:

(a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;

(b) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and

(c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

(3) Without affecting paragraph (a) of subsection (1), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorised officer or agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.

63. Pre-incorporation contracts

(1) A person who enters into a written contract in the name of or on behalf of a company before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).

(2) Within a reasonable time after a company comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.

(3) When a company adopts a contract under subsection (2),

(a) the company is bound by, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and

(b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

64. Contracts for payment or transfer

(1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situate, is entered into by a company and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property

(a) upon the death of the person making the designation;

(b) upon the death of another person; or

(c) upon the happening of any other event specified in the contract, agreement, deed or other instrument,

then, any such payment, delivery or transfer, the rights of any payee or beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

(2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that

(a) the designation is revocable or subject to change; or

(b) the claim or property

(i) is not yet payable or transferable, as the case may be, at the time the designation is made, or

(ii) is subject to withdrawal, collection or assignment by the person making the designation.

65. Notes and bills of exchange

A promissory note or bill of exchange shall be deemed to have been made, accepted or exchange endorsed by a company if it is made, accepted or endorsed in the name of the company

(a) by or on behalf or on account of the company; or

(b) by a person acting under the express or implied authority of the company,

and if so endorsed, the person signing the endorsement is not liable thereon.

66. Power of attorney

(1) A company may, by an instrument in writing and under its common seal, authorise a person or other body corporate, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

67. Authentication or attestation

(1) A document requiring authentication or attestation by a company may be signed by a director, a secretary or by an authorised officer or agent of the company, and need not be under its common seal.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.

68. Company without shareholders

If at any time there is no shareholder of a company any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.

**PART VII Merger, Consolidation, Sale of Assets, Forced Redemptions,
Arrangements and Dissenters**

69. Definitions

In this Part

- (1) "consolidated company" means the new company that results from the consolidation of two or more constituent companies;
- (2) "consolidation" means the uniting of two or more constituent companies into a new company;
- (3) "constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;
- (4) "merger" means the merging of two or more constituent companies into one of the constituent companies;
- (5) "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;
- (6) "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;
- (7) "surviving company" means the constituent company into which one or more other constituent companies are merged.

70. Merger and consolidation

- (1) Two or more companies may merge or consolidate in accordance with subsections (2) to (4).
- (2) 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 of 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 articles or by-laws 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 articles or by-laws for a company, except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(3) 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.

(4) The following apply in respect of a merger or consolidation under this section;

(a) the plan of merger or consolidation must be authorised by a resolution of shareholders 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 articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class or series to vote on the proposed amendment as a class or series;

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

(c) if it is proposed to obtain the written consent of shareholders, a copy of the plan of merger or consolidation must be given to each shareholder, 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 shareholders 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 consolidation, any statement required to be included in the articles or by-laws for a company;

(ii) the date on which the Articles or by-laws of each constituent company were registered by the Registrar;

(iii) the manner in which the merger or consolidation was authorised 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;

(g) A certification of merger or consolidation issued by the Registrar is prima facie evidence of compliance with all requirements of this Ordinance in respect of the merger or consolidation.

71. Merger with subsidiary business company

(1) A parent company may merge with a subsidiary company without the authorisation of the shareholders of any company, in accordance with subsections (2) to (6), if the surviving company will satisfy the requirements prescribed for a company under section 4.

(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 of 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 shareholder of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that shareholder.

(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 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 shareholders 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 Ordinance in respect of the merger.

72. Effect of merger or consolidation

(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 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 articles and by-laws, 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 articles and by-laws of the surviving company are automatically amended to the extent, if any, that changes in its articles and by-laws 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 authorised to be contained in the articles and by-laws of a company, are the articles and by-laws of the consolidated company;

(d) property of every description, including property currently under any form of negotiation 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, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any shareholder, 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 shareholder, 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 shareholder, 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.

73. Merger or consolidation with foreign company

(1) One or more companies may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside New Utopia 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 New Utopia are incorporated.

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

(a) a company shall comply with the provisions of this Ordinance with respect to the merger or consolidation, as the case may be, of such companies and companies incorporated under the laws of a jurisdiction outside New Utopia 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 New Utopia, it must submit to the Registrar

(i) an agreement that a service of process may be effected on it in New Utopia in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent international business company or in respect of proceedings for the enforcement of the rights of a dissenting shareholder of constituent international business company 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 shareholders of a constituent international business company the amount, if any, to which they are entitled under this Ordinance with respect to the rights of dissenting shareholders; 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 70 if the surviving company or the consolidated company is incorporated under this Ordinance, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside New Utopia, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 70 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 Ordinance, 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 New Utopia, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

74. Disposition of assets

Any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets of a company, 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 shareholders for it to be authorised by a resolution of shareholders;
- (c) if a meeting of shareholders is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each shareholder, 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 shareholders, an outline of the proposal must be given to each shareholder, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

75. Redemption of minority shares

(1) Subject to the articles or by-laws

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

(b) shareholders 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 70, may give a written instruction to a company directing the company to redeem the shares held by the remaining shareholders.

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

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

76. Proposed compromise

(1) Where a compromise or arrangement is proposed between a company and its creditors of any class, or between the company and its shareholders of any class, the Court may, on the application of the company or of any creditor or shareholder of the company or, in the case of a winding up, of the liquidator, order a meeting of the creditors or class of creditors, or of the shareholders of the company or class of shareholders, as the case may be.

(2) If a majority representing 75 per cent in value of the creditors or class of creditors, or shareholders or class thereof as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the Court and an order was accordingly made, be binding on all creditors or class of creditors, or on the shareholders or class thereof, as the case may be, and on the company or in the event of a winding up, on the liquidator.

(3) An order made under subsection (2) has no effect until a copy has been filed with the Registrar, and a copy of such order shall be annexed to copies of the articles of the company issued after the making of the order.

(4) In this section "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both.

77. Rights of dissenters

(1) A shareholder of a company 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 shareholder 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 shareholders in accordance with their respective interests within one year after the date of disposition; or

(d) a redemption of his shares by the company pursuant to section 75.

(2) A shareholder who desires to exercise his entitlement under subsection (1) must give to the company, before the meeting of shareholders 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 shareholder to whom the company did not give notice of the meeting in accordance with this Ordinance or where the proposed action is authorised by written consent of shareholders without a meeting.

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

(4) Within 21 days immediately following the date on which the vote of shareholders authorising the action is taken, or the date on which written consent of shareholders without a meeting is obtained, the company must give written notice of the authorisation or consent to each shareholder who gave written objection or from whom written objection was not required, except those shareholders who voted for, or consented in writing to, the proposed action.

(5) A shareholder to whom the company was required to give notice who elects to dissent must, within 21 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 shareholder who elects to dissent from a merger under section 71 must give to the company a written notice of his decision to elect to dissent within 21 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 71.

(6) A shareholder 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 shareholder to whom the notice relates ceases to have any of the rights of a shareholder 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 shareholders 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 shareholder to purchase his shares at a specified price that the company determines to be their fair value; and if, within 28 days immediately following the date on which the offer is made, the company making the offer and the dissenting shareholder agree upon the price to be paid for his shares, the company shall pay to the shareholder the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting shareholder fail, within the period of 28 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the shareholder, within 21 days immediately following the date on which the period of 28 days expires, the following shall apply:

- (a) the company and the dissenting shareholder 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 shareholder as of the close of business on the day prior to the date on which the vote of shareholders authorising the action was taken or the date on which written consent of shareholders 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 shareholder for all purposes; and

(d) the company shall pay to the shareholder 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 shareholder of his entitlement under this section excludes the enforcement by the shareholder 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 shareholder to institute proceedings to obtain relief on the ground that the action is illegal.

PART VIII Continuation

78. Continuation

(1) A company incorporated under the laws of a jurisdiction outside New Utopia may, if it satisfies the requirements of section 4, continue as a company as follows:

(a) the 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 the articles of incorporation under section 8, and

(v) the amendments to its articles and by-laws 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 articles and by-laws 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 Ordinance.

(2) A company incorporated under the laws of a jurisdiction outside New Utopia is entitled to continue as a company notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

(3) Notwithstanding any provisions of part XII of this Ordinance, a resident company may, by resolution of the directors and subject to notification of the Registrar, continue as an international business company under this Ordinance.

79. Provisional registration

(1) A company incorporated under the laws of a jurisdiction outside New Utopia that is permitted under section 78 to continue as a company may, after complying with paragraphs (a) and (b) of subsection (1) of section 78, submit to the Registrar the following documents:

(a) articles of continuation, accompanied by a copy of its articles and by-laws, 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 authorisation designating one or more persons who may give notice to the Registrar, by telex, telegram, facsimile, 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 Ordinance.

(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 authorisation.

(5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorisation 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 authorisation 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 authorise 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.

80. Certificate of continuation

A certificate of continuation issued by the Registrar under section 78 or under section 79 is prima facie evidence of compliance with all requirements of this Ordinance in respect of continuation.

81. Effect of continuation

(1) From the time of the issue by the Registrar of a certificate of continuation

(a) the company to which the certificate relates

(i) continues to be a company under the name designated in the articles of continuation;

(ii) is capable of exercising all powers of a company; and

(iii) is no longer to be treated as a company incorporated under the laws of a jurisdiction outside New Utopia;

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

(c) property of every description, including including property currently under any form of negotiation 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 Ordinance

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

(b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any shareholder, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Ordinance, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the shareholder, 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 in respect of the company shall be deemed to have been issued in conformity with this Ordinance, 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 shareholder 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 in respect to the company any provisions of the articles and by-laws of the company do not in any respect accord with this Ordinance

(a) the provisions of the articles and by-laws continue to govern the company until the provisions are amended to accord with this Ordinance 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 articles and by-laws of the company that are in any respect in conflict with this Ordinance cease to govern the company when the

provisions are amended to accord with this Ordinance 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 articles and by-laws as may be necessary to accord with this Ordinance within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

82. Continuation under foreign law

(1) Subject to its articles or by-laws, a company may, by a resolution of directors or of shareholders, continue as a company incorporated under the laws of a jurisdiction outside New Utopia in the manner provided under those laws.

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

(3) Where a company is continued under the laws of a jurisdiction outside New Utopia

(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 New Utopia;

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

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

PART IX Winding Up, Dissolution and Striking Off

83. Compulsory winding up upon expiration

A company shall begin to wind up and dissolve by a resolution of directors upon the expiration of such time as may be prescribed by its articles or by-laws.

84. Voluntary winding up and dissolution

(1) A company that has never issued shares may voluntarily begin to wind up and dissolve by a resolution of directors.

(2) Subject to its articles or by-laws, a company that has previously issued shares may voluntarily begin to wind up and dissolve by a resolution of shareholders.

85. Powers of directors in winding up and dissolution

Upon the commencement of a winding up and dissolution required under section 83 or 84 the directors may only

(a) authorise a liquidator, by a resolution of directors, to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or shareholders of the company; and

(b) determine to rescind the articles of dissolution as permitted under section 89.

86. Appointment and duties of liquidator

(1) If from any cause whatever there is no liquidator acting in the case of a winding up, the Court may, on the application of a contributory, creditor or other interested party appoint a liquidator or liquidators, and the Court may on due cause shown remove any liquidator and appoint another liquidator to act in the matter of a winding up.

(2) A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding up and dissolution, proceed

(a) to identify all assets of the company;

(b) to identify all creditors of and claimants against the company;

(c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

(d) to distribute any surplus assets of the company to the shareholders in accordance with the articles and by-laws;

(e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and

(f) to send a copy of the statement of account to all shareholders if so required by the plan of dissolution required by section 88.

(3) A transfer of all or substantially all of the assets of a company for the benefit of the creditors and shareholders of the company, is sufficient to satisfy the requirements of paragraphs (c) and (d) of subsection (2).

87. Powers of liquidator

(1) In order to perform the duties imposed on him under section 86, a liquidator has all powers of the company that are not reserved to the shareholders under this Ordinance or in the articles or by-laws, including, but not limited to, the power

(a) to take custody of the assets of the company and, in connection there-with, to register any property of the company in the name of the liquidator or that of his nominee;

(b) to sell any assets of the company at public auction or by private sale without any notice;

(c) to collect the debts and assets due or belonging to the company;

(d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

(e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;

(f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;

(g) to retain solicitors, accountants and other advisers and appoint agents;

(h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation or by a resolution of directors

permitted under section 85, as the liquidator may determine to be necessary or to be in the best interests of the creditors or shareholders of the company;

(i) to execute any contract, agreement or other instrument in the name of the company or name of the liquidator; and

(j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding paragraph (h) of sub-section (1), a liquidator shall not, without the permission of the court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Ordinance.

88. Procedure on winding up and dissolution

(1) The directors of a company required under section 83 or proposing under section 84 to wind up and dissolve the company must approve a plan of dissolution containing

(a) a statement of the reason for the winding-up and dissolving;

(b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;

(c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;

(d) a statement of the estimated time required to wind up and dissolve the company;

(e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or shareholders of the company;

(f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and

(g) a statement as to whether the liquidator is required to send to all shareholders a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding up and dissolution is being effected in a case where subsection (2) of section 84 is applicable,

(a) the plan of dissolution must be authorised by a resolution of shareholders, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the articles or by-laws so provide;

(b) if a meeting of shareholders is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each shareholder, whether or not entitled to vote on the plan of dissolution; and

(c) if it is proposed to obtain the written consent of shareholders, a copy of the plan of dissolution must be given to each shareholder, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors, and if required, by the shareholders in accordance with subsection (2), articles of dissolution must be executed by the company and must contain

(a) the plan of dissolution; and

(b) the manner in which the plan of dissolution was authorised.

(4) Articles of dissolution must be submitted to the Registrar who must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company must cause to be published, in the Gazette, in a publication of general circulation in New Utopia and in a publication of general circulation in the country or place where the company has its principal office, a notice stating

(a) that the company is in dissolution;

(b) the date of commencement of the dissolution;

(c) the names and addresses of the liquidators.

(5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall

(a) strike the company off the Register; and

(b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.

(7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved

(a) the certificate is prima facie evidence of compliance with all requirements of this Ordinance in respect of dissolution; and

(b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published, in the Gazette, in a publication of general circulation in New Utopia and in a publication of general circulation in the country or place where the company has its principal office, a notice that the company has been dissolved and has been struck off the Register.

89. Recision of winding up and dissolution

(1) In the case of a winding-up and dissolution permitted under section 84, a company may, prior to submitting to the Registrar a notice specified in subsection (4) of section 88, rescind the articles of dissolution by

(a) a resolution of directors in the case of a winding-up and dissolution under subsection (1) of section 84; or

(b) a resolution of shareholders in the case of a winding-up and dissolution under subsection (2) of section 84.

(2) A copy of a resolution referred to in subsection (1) must be submitted to the Registrar who must retain and register it in the Register.

(3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in New Utopia and in a

publication of general circulation in the country or place where the company has its principal office.

90. Company unable to pay its claims, etc.

(1) Where

(a) the directors or, as the case may be, shareholders of a company that is required under section 83 or permitted under section 84 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or

(b) the liquidator after his appointment has reason so to believe,

then, the directors, the shareholders or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

(2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of this Ordinance relating to winding-up and dissolution and those provisions shall apply *mutatis mutandis* to the winding-up and dissolution of the company.

91. Winding up and dissolution by the court

Notwithstanding the provisions of this Ordinance relating to winding-up and dissolution, a company may be wound up by the court under any circumstances, in so far as they are applicable to a company, in which a court sees fit, in that case, the provisions of this Ordinance relating to winding-up and dissolution apply *mutatis mutandis* to the winding-up and dissolution of the company.

92. Receivers and managers

The provisions of this Ordinance relating to receivers and managers govern *mutatis mutandis* the appointment, duties, powers and liabilities of receivers and managers of the assets of any international business company.

93. Striking off

(1) The Registrar may strike off from the register the name of a company

(a) which ceases to comply with any of the requirements of section 4;

(b) for failure to pay its annual fee or increased fee as specified in the regulations.

(2) Where the Registrar intends to strike off the name of a company under this section, it is his duty to give the company notice of his intention and a reasonable opportunity to show cause why the name should not be struck off.

(3) After the expiration of time mentioned in the notice, the Registrar may strike the company off the register and publish a notice thereof in the Gazette.

94. Appeal

(1) Any person who is aggrieved by the striking off of a name from the register under section 93 may within 90 days of the giving of the notice under section 93(2) appeal to a Judge in chambers whose decision thereon is final.

(2) The Registrar may, pending an appeal under subsection (1) of any person aggrieved by the striking off of the name, suspend the operation of the striking off in relation to existing business pending the determination of the appeal.

95. Restoration of name to register

(1) Where the name of a company has been struck off the Register, the Registrar may, upon receipt of an application in the approved form and upon payment of the appropriate prescribed fee, and any outstanding fees, restore the name to the Register and issue a certificate in a form adapted to the circumstances.

(2) A company, a creditor, a shareholder or a liquidator thereof may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the name to the register and if the court is satisfied that it would be just for the name of the company to be restored to the register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

96. Effect of striking off

(1) Where the name of a company has been struck off the Register, the company, and the directors, shareholders, liquidators and receivers thereof, may not

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, shareholder, liquidator or receiver thereof, may

(a) make application for restoration of the name of the company to the Register;

(b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that the name of a company is struck off the Register does not prevent

(a) the company from incurring liabilities;

(b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution; or

(c) the appointment by the court of an official liquidator for the company under section 97.

97. Appointment of official liquidator

The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

98. Dissolution of company struck off

(1) If the name of a company has been struck off the Register under section 93 and remains struck off continuously for a period of 2 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Board of Governors to do so, apply to the court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to

(a) identifying and taking possession of all assets of the company;

(b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and

(c) applying those assets that he recovers in the following order of priority:

(i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and

(ii) in satisfaction *pari passu* of all other claims admitted by the official liquidator.

(3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may as it considers reasonable confer on him.

(4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.

(5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Government of New Utopia and the company is dissolved.

(6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.

(7) No liability attaches to an official liquidator

(a) to account to creditors of the company who have not submitted claims within the time allowed by him; or

(b) for any failure to locate any assets of the company.

PART X Exemptions From Tax

99. Exemptions from tax

(1) A company which does no business in New Utopia shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside New Utopia or in connection with matters of company administration which may occur in New Utopia.

(2) For purposes of this section, no company shall be considered to be doing business in New Utopia solely because it engages in one or more of the following activities -

- (a) maintaining bank accounts in New Utopia;
- (b) holding meetings of directors or shareholders in New Utopia;
- (c) maintaining corporate or financial records in New Utopia;
- (d) maintaining an administrative or managerial office in New Utopia with respect to assets or activities outside New Utopia;
- (e) maintaining a registered agent in New Utopia; and
- (f) investing in stocks or entities of New Utopia companies or being a partner in an New Utopia partnership or a beneficiary of an New Utopia trust or estate.

100. Exemption for dividends and distributions

Any dividend or distribution by a company which does no business in New Utopia to another such company, or to individuals or entities which are not citizens or residents of New Utopia, shall be exempt from any tax or withholding provisions of New Utopia law which would otherwise be applicable to such company or the recipient of the dividend or distribution.

PART XI Miscellaneous

101. Form of certificate

Any certificate or other document required to be issued by the Registrar shall be in a form approved by the Registrar.

102. Certificate of good standing

(1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company is of good standing if he is satisfied that

(a) the name of the company is on the Register; and

(b) the company has paid all fees, and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) must contain a statement as to whether

(a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;

(b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;

(c) the company is in the process of being wound up and dissolved; or

(d) any proceedings to strike the name of the company off the Register have been instituted.

103. Inspection of documents

(1) Except as provided in subsection (2) of section 79, a person may,

(a) inspect the documents kept by the Registrar pursuant to this Ordinance; and

(b) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.

(2) A document or a copy or an extract of any document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

104. Jurisdiction

For purposes of determining all matters relating to title and jurisdiction the situs of the ownership of shares, debt obligations or other securities of a company is in New Utopia.

105. Declaration by court

(1) A company may, without the necessity of joining any other party, apply to the court, by summons supported by affidavit, for a declaration on any question of interpretation of this Ordinance or of the articles or by-laws of the company.

(2) A person acting on a declaration made by the court as a result of an application under subsection (1) shall be deemed, as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in relation to the subject matter of the application.

106. Judge in chambers

A judge of the New Utopian Court may exercise in chambers any jurisdiction that is vested in the court by this Ordinance and in the exercise of that jurisdiction, the judge may award such costs as he thinks fit.

107. Documents by electronic transfer

Where a notice or document is required by this Ordinance to be sent to the Registrar, he may accept a photostatic or photographic copy of the notice or document or a copy by facsimile or other electronic means that enables the document or notice to be printed in identical form to the original.

108. Filed articles

(1) Where this Ordinance requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided, such documents may be delivered in such manner as the Registrar approves.

(2) A signature required on any document referred to in subsection (1) may be printed or otherwise mechanically or electronically reproduced on the document.

(3) A document with a signature referred to in subsection (2) may be accepted in evidence, notwithstanding any provision to the contrary contained within other legislation.

109. Alteration of documents

The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorised by the person who sent him the notice or document, or by the authorised representative of that person.

110. Regulations

The Board of Governors may make such regulations as are required for the better administration of this Ordinance, and in particular,

- (a) prescribing any matter required or authorised by this Ordinance to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copy of any documents or in respect of any action that the Registrar is required or authorised to take under this Ordinance and prescribing the amount thereof;
- (c) prescribing the contents of notices, or other documents required to be sent to the Registrar or to be taken by him.

111. Penalties

- (1) A company which contravenes the provisions of sections 5, 11(2), 22, 32, 33, 60, 88(4) shall pay a penalty not exceeding one hundred dollars for each day or part thereof during which the contravention continues.
- (2) A director of a company who knowingly permits the contravention is also liable to the payment of a like penalty.
- (3) Any penalty incurred under this Ordinance shall be paid to the Registrar.

112. Recovery of penalties, etc.

Any fee or penalty payable under this Ordinance or the regulations that remains unpaid for 28 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney-General before a magistrate in civil proceedings as a debt due to the Government of New Utopia notwithstanding the amount sought to be recovered.

113. Company struck off the Register liable for fees, etc.

A company continues to be liable for all fees, licence fees and penalties payable under this Ordinance notwithstanding that the name of the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.

114. Fees, etc to be paid into Consolidated Fund

All fees, and penalties to be paid under this Ordinance or the regulations shall be paid into the Consolidated Fund.

115. Fees payable to Registrar

(1) The Registrar may refuse to take any action required of him under this Ordinance for which a fee is prescribed until all fees have been paid.

(2) The Registrar may refuse to continue under this Ordinance a company incorporated under this Ordinance until the fees prescribed as have been paid.

PART XII Resident Companies

Sections within this part shall refer to sections contained within parts I to XI inclusive of this Ordinance.

116. Application

This part shall be considered as applicable only to companies defined as resident companies under section 3 of this Ordinance, and any such company shall observe the provisions in this part in addition to parts I to XI inclusive of this Ordinance.

117. Definitions

In this part "auditor" means a person who

- (a) is qualified as an accountant by examination of, one of the Institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or

(b) possesses such other qualification in accountancy equivalent to the qualification set forth in paragraph (a) as the Board of Governors may, by order, approve and is in good standing with respect to such qualification;

118. Articles of incorporation

Subsection 1 (c) of section 8 shall be amended to read that; A resident company shall not be required to maintain a registered agent within New Utopia.

119. Certificate of Incorporation

Subsection 3 of section 9 shall be amended to read that; The Registrar shall keep a register to be known as the Register of Companies which shall contain such information as he thinks fit and such register shall be open to public inspection in respect of resident companies.

120. Nature of shares

Section 14 shall be amended to read that; Shares in resident companies incorporated under this Ordinance shall be registered shares only.

121. Transfer of bearer shares

Section 25 shall be invalid in respect of resident companies.

122. Registered Agent

Section 33 shall be invalid in respect of resident companies.

123. Meetings of directors

Subsection 1 of section 42 shall be amended to read; Subject to the articles or by-laws, the directors of a resident company may meet at such times and in such manner and places within New Utopia as the directors may determine to be necessary or desirable but such meetings shall take place at annually.

124. Meetings of shareholders

Subsection 1 of section 53 shall be amended to read; Subject to the articles or by-laws, the directors of a resident company may convene meetings of the shareholders of the company at such times and in such manner and places within New Utopia as the directors consider necessary or desirable but such meetings shall take place at least annually.

125. Books, records and common seal

Subsection 1 of section 60 shall be amended to read; A company shall keep such accounts and records as necessary and desirable in order to reflect the true and accurate financial position of the company and that such accounts and records shall be:

- (a) audited by an auditor annually or at such other periods as Registrar may require, and
- (b) such accounts and records shall be in a form acceptable to the Registrar as may be determined from time to time, and
- (c) the audited accounts shall be sent to the Registrar within six months from the end of the financial year of the company unless prior written approval for an extension has been granted by the Registrar.

126. Inspection of books and records

It shall be noted that the audited accounts or a detailed summary thereof of resident companies shall, upon being sent to the Registrar according to section 125 (c), be entered into the Register of Companies and will be open to public inspection.

127. Merger and consolidation

It shall be noted that should any company incorporated in New Utopia, upon either merger or consolidation with either another company incorporated in New Utopia or elsewhere, become in whole or in part a resident company as defined in section 4 of this Ordinance, all the provisions contained in this part shall apply to that company.

128. Exemptions from tax

Section 99 shall be amended to read that; A resident company shall be subject to any import taxes and duties on goods imported into New Utopia as may be determined from time to time by the Board of Governors.