CAYMAN ISLANDS

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THE COMPANIES (AMENDMENT) LAW, 2011

(LAW 16 OF 2011)

THE COMPANIES (AMENDMENT) LAW, 2011

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CAYMAN ISLANDS

Law 16 of 2011.

I Assent

Duncan Taylor

Governor.

22nd April, 2011

A LAW TO AMEND THE COMPANIES LAW (2010 REVISION) TO MAKE MISCELLANEOUS CHANGES TO THE PROVISIONS RELATING TO NAMES OF COMPANIES, SEGREGATED PORTFOLIOS, MERGERS AND CONSOLIDATIONS AND SHARES; AND TO PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Companies (Amendment) Law, 2011.

Short title

2. The Companies Law (2010 Revision), in this Law referred to as the "principal Law," is amended in section 2 -

Amendment of section 2 of Companies Law (2010 Revision) - definitions and interpretation

(a) in subsection (1) -

(i) by inserting in the appropriate alphabetical sequence the following definitions -

" "certified translator" means a person whose interpretation or translation competence has been tested and approved by a professional association or governmental body or any other person determined by the Registrar;

"dual foreign name" means an additional name in any language not utilising the Roman alphabet, utilising any letters, characters, script, accents and other diacritical

marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet;

"name", when relating to the name of a company, means a name in the Roman alphabet or Arabic numerals;

"overseas company" means a company, body corporate or corporate entity existing under the laws of a jurisdiction outside the Islands;

"translated name" means a translation or transliteration of an exempted company's dual foreign name into the English language provided by either a person licensed to provide such company's registered office in the Cayman Islands or a certified translator (together with a statement in the prescribed form as to the foreign language in which such dual foreign name is written);"; and

(ii) by deleting the definition of the words "exempted company" and substituting the following definition -

"exempted company" means a company registered as an exempted company under section 164;"; and

(b) by inserting after subsection (3) the following subsection -

" (4) For the purposes of this Law "paid up" or "fully paid" means, in the case of shares with a nominal or par value, paid up or fully paid as to nominal or par value only and, in the case of shares without nominal or par value, means paid up or fully paid up as to the issue price.".

Amendment of section 7 - memorandum of association

3. The principal Law is amended in section 7(1) by repealing paragraph (a) and substituting the following paragraph -

"(a) the name of the proposed company which in the case of an exempted company, may be preceded by or followed with a dual foreign name, with the addition, in the case of any company not being an exempted company or a company formed on the principle of having no limit placed on the liability of its members, in this Law referred to as an "unlimited company", of the word "Limited" or the abbreviation "Ltd." as the last word in such name; and".

Amendment of section 26 - registration

4. The principal Law is amended in section 26 -

(a) in subsection (3), by repealing paragraph (a) and substituting the following paragraph -

" (a) the name of the company and, in the case of an exempted company, the exempted company's dual foreign name (if any) together with its translated name;"; and

(b) by repealing subsection (4) and substituting the following subsection -

" (4) Upon the filing of a memorandum of association under this section, there shall be paid to the Registrar the fees specified in Part 1 of the Fifth Schedule.".

Amendment of section 30 - restriction on registration of certain names

5. The principal Law is amended in section 30 -

(a) in subsection (1), by repealing paragraph (a) and substituting the following paragraph -

" (a) is identical with a name by which a company in existence is already registered or any translated name entered on the register of companies, or so nearly resembles such name or translated name so as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signified its consent in such manner as the Registrar requires;"; and

(b) by inserting after subsection (3) the following subsections -

" (4) The provisions of the regulatory laws shall apply to any translated name as if it were the name of the company and a company shall not have a translated name which is a name -

(a) prohibited under any regulatory laws; or
(b) which requires approval or permission under any regulatory laws unless such approval or permission as is necessary for the use of such name under the relevant regulatory laws has first been obtained.

(5) A company's dual foreign name shall only be entered on the register of companies if its translated name conforms with the provisions of this section and if it does not so conform then such dual foreign name and such translated name shall not be entered on the register of companies.".

Repeal and substitution of section 31 - change of name

6. The principal Law is amended by repealing section 31 and substituting the following section -

"Change of name

31. (1) Any company may, by special resolution, change its name and, in the case of an exempted company, may adopt a dual foreign name or change its dual foreign name, if any, and any dual foreign name shall precede or follow its name.

(2) Where a company changes its name or its dual foreign name, the Registrar, on receiving the special resolution authorising the same and, in the case of a company changing its dual foreign name, receiving its translated name together with the fees provided under section 199(1)(a) and (b), and on being satisfied that the change of name conforms with section 30, shall enter the new name and, if applicable, the new translated name on the register in place of the former name and lodge the special resolution for record and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(3) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name or new translated name is registered by a name or a translated name which in any way contravenes section 30 or which, in the opinion of the Registrar, is misleading or undesirable, then the company may, with the sanction of the Registrar, change its name or its translated name as the case may be and shall, if the Registrar so directs, change its name or translated name within six weeks of the date of such direction or within such longer period as the Registrar may think fit.

(4) A company which defaults in complying with a direction under subsection (3) is liable to a fine of ten dollars for every day during which the default continues."

Amendment of section 34 - share premium account

7. The principal Law is amended in section 34 -

(a) in subsection (2), by repealing paragraphs (c), (d), (e) and (f) and substituting the following paragraphs -

" (c) any manner provided in section 37;

(d) writing off the preliminary expenses of the company; and

(e) writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.";

(b) in subsection (3), by deleting the word "has" and substituting the word "had"; and

(c) in subsection (6), by inserting after the word "merger," the word "consolidation,".

Amendment of section 37 - redemption and purchase of shares

8. The principal Law is amended in section 37 -

(a) in subsection (1), by inserting after the word "shareholder" the words "and, for the avoidance of doubt, it shall be lawful for the rights attaching to any shares to be varied, subject to the provisions of the company's articles of association, so as to provide that such shares are to be or are liable to be so redeemed";

(b) in subsection (3) by repealing paragraphs (b), (c), (d), (e), (f) and (g) and substituting the following paragraphs -

" (b) A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any issued shares of the company other than shares held as treasury shares.

(c) Redemption or purchase of shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the company's articles of association.

(d) If the articles of association do not authorise the manner and terms of the purchase, a company shall not purchase any of its own shares unless the manner and terms of purchase have first been authorised by a resolution of the company.

(da) For the avoidance of doubt -

(i) a company's articles of association; or

(ii) a resolution of the company,

may authorise the company's directors to determine the manner or any of the terms of, any such redemption or purchase not being inconsistent with such articles of association or resolution and subject to such restrictions (if any) as may be provided therein.

(e) The premium, if any, payable on redemption or purchase must have been provided for -

(i) out of either or both of the profits of the company or the company's share premium

account, before or at the time the shares are redeemed or purchased; or

(ii) in the manner provided for in subsection (5).

(f) Shares may be redeemed or purchased out of profits of the company, out of the share premium account or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase or in the manner provided for in subsection (5).

(g) Subject to section 37A, shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company's authorised share capital.”; and

(c) by repealing subsections (4) and (5) and substituting the following subsections -

“ (4) (a) Where, under this section, shares of a company are redeemed or purchased wholly out of either or both of the company's profits or share premium account, the amount by which the company's issued share capital is diminished in accordance with paragraph (g) of subsection (3) on cancellation of the shares redeemed or purchased shall be transferred to a reserve called the “capital redemption reserve” and the share premium account or company’s profits, as the case may be, shall be adjusted accordingly.

(b) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(c) Paragraph (b) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under subsection (5).

(d) The provisions of this Law relating to the reduction of a company's share capital apply as if

the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.

(5) (a) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles of association, make a payment in respect of the redemption or purchase of its own shares otherwise than out of its profits, share premium account, or the proceeds of a fresh issue of shares.

(b) References in subsections (6) to (9) to payment out of capital are, subject to paragraph (f), references to any payment so made, whether or not it would be regarded apart from this subsection as a payment out of capital.

(c) The amount of any payment which may be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with -

(i) any profits and share premium of the company being applied for purposes of the redemption or purchase; and

(ii) the proceeds of any fresh issue of shares made for the purpose of the redemption or purchase,

is equal to the price of redemption or purchase, and the payment out of capital permitted under this paragraph is referred to in subsections (6) to (9) as the capital payment for the shares. Nothing in this paragraph shall be taken to imply that a company shall be obliged to exhaust any profits and share premium before making any capital payment.

(d) Subject to paragraph (f), if the capital payment for shares redeemed or purchased and cancelled is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.

(e) Subject to paragraph (f), if the capital payment is greater than the nominal amount of the shares

redeemed or purchased the amount of any capital redemption reserve or fully paid share capital of the company may be reduced by a sum not exceeding, or by sums not in the aggregate exceeding, the amount by which the capital payment exceeds the nominal amount of the shares.

(f) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this subsection, the references in paragraphs (d) and (e) to the capital payment are to be read as referring to the aggregate of that payment and those proceeds.".

Insertion of sections 37A - treasury shares and 37B - surrender of shares

9. The principal Law is amended by inserting after section 37 the following sections -

"Treasury shares

37A. (1) Shares that have been purchased or redeemed by a company or surrendered to the company pursuant to sections 37 or 37B shall not be treated as cancelled pursuant to sections 37(3)(g) or 37B(2) but shall be classified as treasury shares and sections 37(4), 37(5)(d) and 37B(2) shall not apply to such shares at the time of such purchase, redemption or surrender, if -

(a) the memorandum and articles of association of the company do not prohibit it from holding treasury shares;

(b) the relevant provisions of the memorandum and articles of association (if any) are complied with; and

(c) the company is authorised in accordance with the company's articles of association or by a resolution of the directors to hold such shares in the name of the company as treasury shares prior to the purchase, redemption or surrender of such shares.

(2) Shares held by a company pursuant to subsection (1) shall continue to be classified as treasury shares until such shares are either cancelled or transferred pursuant to subsection (3).

(3) A company that holds treasury shares may at any time -

(a) cancel the shares in accordance with the provisions of the company's articles of association or (in the absence of any applicable provisions in the Company's articles of association) by a resolution of the directors, and if so cancelled the amount of the company's issued share capital shall be diminished by the nominal or par value of those shares accordingly but the company's authorised share capital shall not be reduced and sections 37(4), 37(5)(d) and 37B(2) shall apply as if the shares had been purchased, redeemed or surrendered as at the date of cancellation; or

(b) transfer the shares to any person, whether or not for valuable consideration (including at a discount to the nominal or par value of such shares).

(4) A sum equal to the consideration (if any) received by the company pursuant to the transfer of a treasury share made in accordance with subsection (3)(b) (such consideration referred to as the "transfer consideration") shall be applied in the following manner -

(a) to the extent that any payment out of capital was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company's share capital an amount equal to the lesser of -

(i) the amount of such payment out of capital; and

(ii) the transfer consideration received in respect of such share;

(b) subject to subsection (5), to the extent that any payment out of share premium was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company's share premium an amount equal to the lesser of (i) the amount of such payment out of share premium and

(ii) the balance of the transfer consideration received in respect of such share after applying subsection (4)(a); and

(c) subject to subsection (5), the balance of the transfer consideration received in respect of such share after applying subsection (4)(a) and (b) shall be credited to the company's profit and loss account.

(5) Notwithstanding the provisions of subsection (4)(b) and (c) but subject to subsection (4)(a), so long as the company shall be able to pay its debts as they fall due in the ordinary course of business immediately following the transfer of a treasury share in accordance with subsection (3)(b), the directors may by resolution determine that all or any part of the transfer consideration received shall be transferred to the company's profit and loss account, share premium account or share capital (or any combination of the foregoing) in such proportions as the directors may (in their sole and absolute discretion but subject to any express contrary provision in the articles of association of the company) determine.

(6) Notwithstanding subsection (7)(b), a treasury share may be transferred by the company and the provisions of this Law and (subject to any specific provisions with respect to the transfer of treasury shares) the memorandum and articles that apply to the transfer of shares shall apply to the transfer of treasury shares.

(7) For so long as a company holds treasury shares -

(a) the company shall be entered in the register of members as holding those shares;

(b) notwithstanding paragraph (a) -

(i) the company shall not be treated as a member for any purpose and shall not exercise any right in respect of the treasury shares, and any purported exercise of such a right shall be void; and

(ii) a treasury share shall not be voted, directly or indirectly, at any meeting of the company and shall not be counted

in determining the total number of issued shares at any given time, whether for the purposes of the company's articles of association or this Law; and

(c) no dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of a treasury share.

Surrender of shares

(8) Nothing in subsection (7) prevents an allotment of shares as fully paid bonus shares in respect of a treasury share and shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as treasury shares.

37B. (1) Subject to any express provisions of the company's memorandum or articles of association to the contrary, a company may accept the surrender for no consideration of any fully paid share (including a redeemable share) unless, as a result of the surrender, there would no longer be any issued shares of the company other than shares held as treasury shares.

(2) Subject to section 37A, any shares surrendered under subsection (1) shall be treated as cancelled on surrender, and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly; but the surrender of shares by a member is not to be taken as reducing the amount of the company's authorised share capital.

(3) This section is without prejudice to any right or power of a company arising under this Law or otherwise to accept the surrender of a share (not being a fully paid share) in lieu of forfeiture.".

Insertion of sections 40A and 40B

10. The principal Law is amended by inserting after section 40 the following sections -

"Branch registers of members

40A. (1) An exempted company may cause to be kept in any country or territory one or more branch registers of such category or categories of members as the exempted company

may determine from time to time.

(2) A branch register is deemed to be part of the exempted company's register of members.

(3) Subject to subsection (6), a branch register shall be kept in the same manner in which a principal register is by this Law required or permitted to be kept.

(4) The exempted company shall cause to be kept at the place where the exempted company's principal register is kept a duplicate of any branch register duly entered up from time to time.

(5) If default is made in complying with subsection (4) within twenty-one days after -

(a) establishing a branch register; or
(b) making changes to the details recorded in a branch register,

the exempted company and every officer of the exempted company who is in default is liable to a fine and, for continued contravention, to a daily default fine on the same basis as is set out in section 40(2).

(6) Subject to subsection (4) with respect to a duplicate of any branch register -

(a) the shares registered in a branch register shall be distinguished from those registered in the principal register; and
(b) no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(7) An exempted company may discontinue keeping any branch register, and thereupon all entries in that branch register shall be transferred to some other branch register kept by the exempted company or to the principal register.

(8) For the avoidance of doubt a listed share register maintained under section 40B(3) shall not constitute a

branch register for the purposes of this section.

(9) In this section -

Transfer and registration of shares in respect of a company with listed shares

"branch register" means a branch register referred to in subsection (1); and

"principal register" means a company's register of members.

40B. (1) Title to listed shares of a company may, if so authorised by such company's articles of association, or (in the absence of any applicable provisions in the company's articles of association) by a special resolution of such company, be evidenced and transferred in accordance with the laws applicable to and the rules and regulations of the relevant approved stock exchange that are or shall be applicable to such listed shares as referred to or specified in such articles of association or special resolution.

(2) For the purposes of subsection (1), the laws applicable to an approved stock exchange include, without limitation, the laws of the jurisdiction under which such approved stock exchange is established in so far as they would apply to an entity established under such laws which has listed shares on such approved stock exchange.

(3) Any register of members maintained by a company in respect of its listed shares may be kept by recording the particulars required by section 40 in a form otherwise than legible if such recording otherwise complies with the laws applicable to and the rules and regulations of the relevant approved stock exchange referred to in subsection (1).

(4) To the extent the listed shares register is kept in a form otherwise than legible it must be capable of being reproduced in a legible form.

(5) A company which maintains a listed shares register must also maintain, in respect of any shares which are not listed shares, a separate register of members in accordance with section 40.

(6) References in any enactment or instrument to a company's register of members shall, unless the context otherwise requires, be construed in relation to a company which maintains any listed shares register as referring to each of such company's listed shares register and, if any, its non-listed shares register.

(7) For the purposes of this section -

"approved stock exchange" means a stock exchange listed in the Fourth Schedule;

"listed shares" means shares which are traded or listed on an approved stock exchange;

"listed shares register" means the register of members required to be maintained by a company in respect of its listed shares pursuant to subsection (3); and

"non-listed shares register" means the register of members maintained by a company pursuant to subsection (5).

(8) For the purpose of this section -

(a) references to title to shares include any legal or equitable interest in shares; and
(b) references to a transfer of title include a transfer by way of security.".

Amendment of section 41 - annual list of members and return of capital, shares, calls etc.

11. The principal Law is amended in section 41 by repealing subsection (2) and substituting the following subsection -

" (2) Every company, other than an exempted company shall, in January of each year after the year of its registration, pay to the Registrar the annual fee specified in Part 2 of the Fifth Schedule.".

Amendment of section 45 - notice of increase of capital and of members to be given to Registrar

12. The principal Law is amended in section 45 by repealing subsection (2) and substituting the following subsection -

" (2) The fees payable on an increase of capital shall be as specified in Part 3 of the Fifth Schedule.".

13. The principal Law is amended in section 52 by inserting after the words "letters of credit of the company", the words "and its name may be followed with or preceded by, at the discretion of the company, its dual foreign name or its translated name, if any, or both.".

Amendment of section 52 - publication of a name by a limited company

14. The principal Law is amended in section 60(1) by deleting paragraph (a) and substituting the following paragraph -

Amendment of section 60 - definition of special resolution

" (a) it has been passed by a majority of at least two-thirds of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given, except that a company may in its articles of association specify that the required majority shall be a number greater than two-thirds, and may additionally so provide that any such majority (being not less than two thirds) may differ as between matters required to be approved by a special resolution; or".

15. The principal law is amended in section 81-

Amendment of section 81 - how contracts may be made

(a) by deleting the marginal note and substituting the following marginal note -

"Contracts and other instruments";

(b) by deleting subsection (1) and substituting the following subsection -

" (1) Contracts, deeds, instruments under seal or other instruments on behalf of any company may be made as follows -

(a) a contract or other instrument which, if made between individuals, would by law be required to be in writing, and to be made by deed or under seal, and a deed or instrument under seal may be made by instrument -

(i) sealed with any seal of the company; or

(ii) which is executed on behalf of the company by any person acting under the express or implied authority of the company and which is either expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed or instrument under seal;

(b) any contract or other instrument which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and

(c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company.”; and

(c) by deleting subsections (4) and (5) and substituting the following subsections -

“ (4) Any contract, deed or other instrument made according to this section may be varied or discharged in the same manner as it is authorised by this section to be made.

(5) All contracts, deeds or other instruments made according to this section shall be effectual in law and shall be binding upon the company and its successors and all other parties thereto, their heirs, executors or administrators, as the case may be.

(6) A contract or other instrument to be governed by the laws of the Islands which is executed by an overseas company is, and is to be treated as, a deed or instrument under seal if it is -

(a) executed in conformity with subsection (1)(a); and

(b) executed in conformity with the requirements imposed by -

(i) the laws of the jurisdiction in which the overseas company was formed or incorporated; and

(ii) its memorandum or articles of association or other constitutional documents (howsoever called).

(7) A contract or other instrument executed in accordance with subsection (6) meets any requirement of any law of the

Islands that the contract or instrument is, and is to be treated as, a deed or instrument executed under seal.

(8) A contract, deed or instrument is executed validly as a contract, deed or instrument under seal where it is executed in any manner contemplated by the parties thereto, including, without limitation -

(a) where the complete contract, deed or instrument is executed; or

(b) where any signature or execution page to the contract, deed or instrument is executed (whether or not the contract, deed or instrument is at such time in final form) which is attached by, or on behalf of, the relevant party to, or otherwise with the relevant party's express or implied authority to, the contract, deed or instrument,

provided always that the contract, deed or instrument is executed in conformity with subsection (1)(a) or (b), or subsection (6), as the case may be.

(9) Subsections (1), (4), (5), (6), (7) and (8) shall apply to contracts, deeds, instruments under seal or other instruments regardless of whether they were made before, on or after the commencement of this subsection, and no contract, deed, instrument under seal or other instrument made before the commencement of this subsection shall be invalid by reason only of any provision of subsections (1), (4), (5), (6), (7) and (8).".

Repeal and substitution of section 83 - execution of deeds, etc. by attorney

16. The principal law is amended by repealing section 83 and substituting the following section -

"Execution of deeds, etc.

83. (1) A company may appoint and empower a person either generally or in respect of a specified matter to execute deeds or instruments under seal on its behalf.

(2) Any appointment under subsection (1) need not be made by deed or instrument under seal, but any person so appointed otherwise than by deed or instrument under seal shall not constitute the donee of a power under the Powers of Attorney Law (1996 Revision) (but without prejudice to the authority otherwise conferred upon them by the company).

(3) A deed or instrument under seal signed by a person on behalf of a company pursuant to the authority conferred pursuant to subsection (1) shall bind the company and have effect as if it were executed as such by the company.".

Amendment of section 84 - power of company to have official seal for use abroad

17. The principal Law is amended in section 84 by repealing subsection (1) and substituting the following subsection -

" (1) A company may maintain a common seal, which shall bear the name of the company in legible characters, which may, at the discretion of the company, be followed with or preceded by its dual foreign name or its translated name, if any, or both at such place as the company may, from time to time, determine and in default of any such determination, at its registered office, and may, if so authorised by its articles of association, maintain a duplicate seal or seals, each of which shall be a facsimile of its common seal at such place or places throughout the world as it may authorise and any such duplicate seal may, but shall not be obliged to, bear on its face the name of any country, territory, district, or place where it is to be used.".

Amendment of section 104 - appointment and powers of provisional liquidator

18. The principal Law is amended in section 104 -

(a) in subsection (2) by inserting after the words "a creditor or contributory of the company" the words " or, subject to subsection (6), the Authority, "; and

(b) by inserting after subsection (5) the following subsection -

(6) An application for the appointment of a provisional liquidator may be presented by the Authority on the grounds under subsection (2), in respect of any company which is carrying on a regulated business in the Islands upon the grounds that it is not duly licensed or registered to do so under the regulatory laws or for any other reason as provided under the regulatory laws or any other

law regardless of whether or not the Authority presented the winding up petition.".

19. The principal Law is amended in section 116 by repealing paragraph (d) and substituting the following paragraph -

Amendment of section 116 - circumstances in which a company may be wound up voluntarily

" (d) if the company in general meeting resolves that it be wound up voluntarily because it is unable to pay its debts as they fall due.".

20. The principal Law is amended in section 121 by repealing subsection (1) and substituting the following subsection -

Amendment of section 121 - removal of voluntary liquidators

" (1) A voluntary liquidator may be removed from office by a resolution of the company in a general meeting convened especially for that purpose.".

21. The principal Law is amended in section 136 by deleting the words "and to imprisonment for five years" and substituting the words "of twenty-five thousand dollars or to imprisonment for a term of five years, or to both.".

Amendment of section 136 - misconduct in course of winding up

22. The principal Law is amended in section 137 by deleting the words "and to imprisonment for five years" and substituting the words "of twenty-five thousand dollars or to imprisonment for a term of five years, or to both.".

Amendment of section 137 - material omissions from statement relating to company's affairs

23. The principal Law is amended in section 141(2)(b) by deleting the words "or holders of debentures secured by,".

Amendment of section 141 - preferential debts

24. The principal Law is amended in section 169 by repealing subsection (1) and substituting the following subsection -

Amendment of section 169 - annual fee

" (1) Every exempted company shall, in January of each year after the year of its registration, pay to the revenues of the Islands the annual fee specified in Part 4 of the Fifth Schedule.".

25. The principal Law is amended in the heading to Part IX by deleting the words "**Companies Incorporated Outside the Islands"** and substituting the words **"Overseas Companies".**

Amendment of heading to Part IX- Part IX - companies incorporated outside the Islands carrying on business within the Islands

26. The principal Law is amended by repealing section 183 and substituting the following section -

Repeal and substitution of section 183 - definition of foreign companies

"Definition of foreign company

183. In this Part, a foreign company means an overseas company which, after the 1st December, 1961, establishes a place of business or commences carrying on business (which expressions in this Part include, without limiting their generality, the sale by or on behalf of an overseas company of its shares or debentures and offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands) within the Islands, and all overseas companies which before the 1st December, 1961 established a place of business or carried on business as aforesaid within the Islands at the 1st December, 1961.".

Amendment of section 184 - documents, etc., to be delivered to Registrar by foreign companies

27. The principal Law is amended in section 184 by repealing subsections (1) and (2) and substituting the following subsections -

" (1) Every foreign company shall, within one month after becoming a foreign company as defined in section 183, deliver to the Registrar for registration the following -

(a) a certified copy of the foreign company's certificate of formation or incorporation, or the equivalent document issued by the relevant authority as evidence of its formation or incorporation;

(b) a certificate of good standing issued by the relevant authority (or a certified copy thereof), or, if the relevant authority does not issue such certificates of good standing, a declaration signed by a director of the foreign company that the foreign company is in good standing with the relevant authority, in either case, dated no earlier than one month prior to the date of its delivery to the Registrar;

(c) a certified copy of any charter, bye-laws or memorandum or articles of association or other constitutional document (howsoever called) of the foreign company that is required to be filed with the relevant authority under the laws of the relevant jurisdiction in connection with the incorporation or formation of the foreign company;

(d) a list of its directors, containing such particulars with respect to the directors as are by this Law required to be contained with respect to directors in the register of the directors of a company; and

(e) the names and addresses of some one or more than one person resident in the Islands authorised to accept on its behalf service of process and any notices required to be served on it,

and shall pay to the Registrar the fee specified in Part 5 of the Fifth Schedule.

(2) Every foreign company shall, in January of each year pay to the revenues of the Islands the annual fee specified in Part 5 of the Fifth Schedule.".

Amendment of section 185 - power of certain foreign companies to hold land

28. The principal Law is amended in section 185 -

(a) repealing subsections (1) and (2) and substituting the following subsections -

" (1) An overseas company shall not have power to hold land in the Islands except where it is a foreign company which has delivered to the Registrar documents, particulars and fees specified in section 184.

(2) If an overseas company which is not a foreign company holds land in the Islands or if a foreign company ceases to carry on, or have a place of business in the Islands or ceases to be a foreign company or fails to comply with this Part, the Governor in Cabinet may, whenever it appears to him to be necessary in the public interest, order the overseas company to transfer any lands held by, vested in or belonging to it to a person capable of holding such lands and of being registered as proprietor thereof under the Registered Land Law (2004 Revision).";

2004 Revision

(b) in subsection (3) by deleting the words "a body corporate or a company" and substituting the words "an overseas company"; and

(c) in subsection (4) -

(i) by deleting the words "under paragraph (c)" and substituting the words "under paragraph (e)"; and

(ii) by deleting the words "body corporate or company" wherever they appear and substituting the words "overseas company".

Amendment of section 186 - registration of foreign companies

29. The principal Law is amended in section 186 by deleting the word "company" wherever it appears and substituting the words "foreign company".

Repeal and substitution of section 187 - return to be delivered to Registrar where documents etc., altered

30. The principal Law is amended by repealing section 187 and substituting the following section -

"Return to be delivered to Registrar where documents etc., altered

187. If, in the case of any foreign company, an alteration is made in or to any document or other information filed with the Registrar pursuant to section 184(1) (other than a document referred to in section 184(1)(b)) the foreign company shall, within thirty days after the date of such alteration, deliver to the Registrar for registration a return containing the particulars of the alteration.".

Repeal and substitution of section 188 - obligation to state name of company, whether limited, and country where incorporated

31. The principal Law is amended by repealing section 188 and substituting the following section -

"Obligation to state name of foreign company whether limited, and country where formed or incorporated

188. Every foreign company shall -

(a) in every prospectus inviting subscriptions for its shares or debentures in the Islands state the country in which the foreign company is formed or incorporated;

(b) conspicuously exhibit on every place where it carries on business in the Islands the name of the foreign company and the country in which the foreign company is formed or incorporated;

(c) cause the name of the foreign company and of the country in which it is formed or incorporated to be stated in legible characters on all bill heads, letter paper, notices, advertisements and other official publications; and

(d) if the liability of the members of the foreign company is limited, cause notice of that fact to be stated in every such prospectus as aforesaid and on all bill heads, letter paper, notices, advertisements and other official publications in the Islands, and to be affixed on every place where it carries on its business in the Islands.".

Amendment of section 189 - service on foreign company to which this Part applies

31A. The principal Law is amended in section 189 by deleting the words "paragraph (c) of section 184 or paragraph (c) of section 187" and substituting the words "section 184(1)(e) or 187".

32. The principal Law is amended by repealing section 190 and substituting the following section -

Repeal and substitution of section 190 - deeds etc., of foreign companies executed outside the Islands

"Deeds, etc., of overseas companies

190. The execution of a contract or other instrument in accordance with section 81(6)(a) and the fact that it was executed in accordance with a requirement referred to in section 81(6)(b) may be proved by the affidavit or solemn declaration of a witness to the execution of the contract or other instrument sworn or made before a notary public or any other person qualified to administer oaths in any jurisdiction.".

33. The principal Law is amended by repealing section 191 and substituting the following section -

Repeal and substitution of section 191 - execution of deeds etc.

"Execution of deeds, etc.

191. (1) An overseas company may appoint and empower a person either generally or in respect of a specified matter, to execute deeds or instruments under seal on its behalf.

(2) Any appointment under subsection (1) need not be made by deed or instrument under seal, but any person so appointed otherwise than by deed or instrument under seal shall not constitute the donee of a power under the Powers of Attorney Law (1996 Revision) (but without prejudice to the authority otherwise conferred upon them by the overseas company).

(1996Revision)

(3) A deed or instrument under seal, signed by a person on behalf of an overseas company pursuant to authority conferred pursuant to subsection (1), shall be binding on that overseas company and shall have effect as if it were executed as such by the overseas company.".

34. The principal Law is amended by repealing section 194 and substituting the following section -

Repeal and substitution of section 194 - definitions in this Part

"Definitions in this Part

194. (1) In this Part -

"certified copies" includes copies (whether in the form of an electronic record or otherwise) certified as true copies of the originals by -

(a) the relevant authority;
(b) a notary public in the relevant jurisdiction or

in the Islands; or

(c) a person qualified to practise law in the relevant jurisdiction or in the Islands, or

(d) any other person acceptable to the Registrar;

"director" in relation to a foreign company, means any director, officer, member or other person (howsoever called) in whom the management of the foreign company is vested;

"electronic record" has the same meaning as in Part I of the Electronic Transactions Law (2003 Revision);

(2003 Revision)

"excluded share transfer or share registration office" means a share transfer or share registration office provided within the Islands by a person licensed or registered to do so under the regulatory laws;

"place of business" includes a share transfer or share registration office (except an excluded share transfer or share registration office);

"relevant authority" in respect of a foreign company, means the national, state or local government authority, registry or other body in the relevant jurisdiction that is responsible for forming or incorporating the foreign company; and

"relevant jurisdiction" means the jurisdiction in which the foreign company has been formed or incorporated.

(2) In this Part, an overseas company shall not be deemed to have established or to have commenced carrying on business within the Islands solely by reason of having an excluded share transfer or share registration office.".

Amendment of section 195 - power of Registrar to prohibit sale

35. The principal Law is amended in section 195 by deleting the words "with or without hard labour".

Amendment of section 199 - fees in lieu of other provisions

36. The principal Law is amended in section 199 by repealing subsection (1) and substituting the following subsection -

" (1) Wherever this Law provides for or requires the filing of any document, notice or return with the Registrar or the issue of any certificate or the Registrar provides a copy of any document in respect of which no fee is elsewhere specifically provided, the fees specified in Part 6 of the Fifth Schedule shall be payable.".

37. The principal Law is amended in section 206(2)(b) by deleting the words "pursuant to section 188" and substituting the words "pursuant to section 169".

Amendment of section 206 - deregistration of exempted companies including companies registered under this Part

38. The principal Law is amended in section 212 by -

Amendment of section 212 - definitions in this Part

(a) deleting the definition of the words "segregated portfolio shares" and substituting the following definition -

" "segregated portfolio shares" means shares issued under section 217(1);" and

(b) deleting the definition of the words "segregated portfolio share dividend" and substituting the following definition -

"."segregated portfolio share dividend" means a dividend paid under section 217(3);".

39. The principal Law is amended in section 213 -

Amendment of section 213 - applications for registration

(a) in subsection (1) by deleting the words "an exempted segregated portfolio company" and substituting the words "a segregated portfolio company";

(b) by repealing subsections (4) and (5) and substituting the following subsections -

" (4) An application under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by the fee specified in Part 7 of the Fifth Schedule.

(5) A segregated portfolio company shall, on paying the annual fee payable under section 169, pay the additional fee specified in Part 7 of the Fifth Schedule and the additional annual fee specified in Part 7 of the Fifth Schedule in respect of each segregated portfolio it has created (other than those in respect of which notice of termination has been given under subsection (6)), both of which shall be tendered in accordance with section 169(2).";

(c) in subsection (6) by inserting after the words "it has created" the words "(other than those in respect of which notice of termination has been given hereunder in a prior year) and indicating those which have been terminated under section 228A since the date of the last notice under this subsection"; and

(d) in subsection (7), by deleting the words "A segregated portfolio company who" and substituting the words "A segregated portfolio company which".

Repeal and substitution of section 216 - segregated portfolios

40. The principal Law is amended by repealing section 216 and substituting the following section -

"Segregated portfolios

216. (1) A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the segregated portfolio company held within or on behalf of a segregated portfolio from the assets and liabilities of the segregated portfolio company held within or on behalf of any other segregated portfolio of the segregated portfolio company or the assets and liabilities of the segregated portfolio company which are not held within or on behalf of any segregated portfolio of the segregated portfolio company.

(2) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the segregated portfolio company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words "Segregated Portfolio" or "SP" or "S.P.".".

Amendment of section 218 - company to act on behalf of portfolios

41. The principal Law is amended in section 218 by repealing subsections (1), (2), and (3) and substituting the following subsections -

" (1) Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio shall be executed by the segregated portfolio company on behalf of such segregated portfolio which shall be identified or specified, and such execution shall specify that it is in the name of, or by, or for the account of, such segregated portfolio.

(2) If a segregated portfolio company is in breach of subsection (1) the directors shall, forthwith upon becoming aware of the breach -

(a) make any necessary enquiries to determine the correct segregated portfolio to which the relevant act, matter, deed,

agreement, contract, instrument under seal or other instrument or arrangement should be attributed;

(b) make the correct attribution; and

(c) notify in writing all persons which are party to the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement that was executed, or which may be adversely affected by any such attribution, of that attribution and the parties' rights under subsection (3).

(3) Any person notified under subsection (2)(c) (or which should have been so notified) who objects to an attribution by the directors under subsection (2) may, within thirty days of receiving written notice under that subsection in the case of persons who received such notice, apply to the Court by petition for a re-attribution; and the Court may, upon hearing the petition and taking account of the intention of the parties and such other factors as are deemed relevant by it, order that the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement be deemed to be attributable to a particular segregated portfolio or portfolios or to the general assets (if applicable in particular proportions or on a particular basis) and may make such ancillary orders as may be just and equitable in the case.".

Amendment of section 219 - assets

42. The principal Law is amended in section 219(6) by repealing paragraph (c) and substituting the following paragraph -

" (c) to ensure that assets and liabilities are not transferred between segregated portfolios or between a segregated portfolio and the general assets otherwise than at full value.".

Amendment of section 220 - segregation of assets

43. The principal Law is amended by repealing section 220 and substituting the following section -

"Segregated portfolio assets

220. Segregated portfolio assets -

(a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company and holders of segregated portfolio shares who are creditors or holders of segregated portfolio shares in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company and holders of segregated portfolio shares who are not creditors or holders of segregated portfolio shares in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.".

Amendment of section 223 - winding up of company

44. The principal Law is amended in section 223(1) by repealing paragraph (b) and substituting the following paragraph -

" (b) in discharge of the claims of creditors of the segregated portfolio company and holders of segregated portfolio shares, shall apply the segregated portfolio company's assets to those entitled to have recourse thereto under this Part.".

Insertion of section 228A - termination and re-instatement

45. The principal Law is amended by inserting after section 228 the following section -

"Termination and re-instatement

228A. (1) Where a segregated portfolio has no segregated portfolio assets or liabilities of the segregated portfolio company attributable to it, the segregated portfolio company may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) terminate such segregated portfolio.

(2) A segregated portfolio company may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) reinstate a segregated portfolio which has been terminated under subsection (1).".

Amendment of section 232 - definitions in this Part

46. The principal Law is amended in section 232 -

(a) by deleting the definition of "constituent company" and substituting the following definition -

" "constituent company" means a company that is participating in a merger or consolidation with one or more other companies;";

(b) by deleting the definition of "foreign company";

(c) by deleting the definition of "parent company" and substituting the following definition -

" "parent company" means, with respect to another company, a company that holds issued shares that together represent at least ninety per cent of the votes at a general meeting of that other company;"; and

(d) by deleting the definition of "subsidiary company" and substituting the following definition -

" "subsidiary company" means, with respect to another company, a company of which that other company is the parent company;".

Amendment of section 233 - merger and consolidation

47. The principal Law is amended in section 233 -

(a) by repealing subsection (1) and substituting the following subsection -

" (1) Without prejudice to sections 86 and 87, but subject to section 239A, two or more companies limited by shares and incorporated under this Law, may, subject to any express provisions to the contrary in the memorandum and articles of association of any of such companies, merge or consolidate in accordance with subsections (3) to (15).";

(b) in subsection (4) -

(i) in paragraph (b) by deleting the word "such" and substituting the word "constituent";
(ii) in paragraph (e) by inserting after the words "merger or consolidation, including" the words "where applicable,"; and
(iii) by repealing paragraph (j) and substituting the following paragraph -
" (j) the name and address of any secured creditor of a constituent company and the nature of the secured interest held; and";

(c) by repealing subsections (5), (6) and (7) and substituting the following subsections -

" (5) Some or all of the shares whether of different classes or of the same class in each constituent company may be converted into or exchanged for different types of property (consisting of shares, debt obligations or other securities in the

surviving company or consolidated company or any other corporate entity, or money or other property, or a combination thereof) as provided in the plan of merger or consolidation.

(6) A plan of merger or consolidation shall be authorised by each constituent company by way of -

(a) a special resolution of the members of each such constituent company; and

(b) such other authorisation, if any, as may be specified in such constituent company's articles of association.

(7) Notwithstanding subsection (6)(a), if a parent company incorporated under this Law is seeking to merge with one or more of its subsidiary companies incorporated under this Law, a special resolution under that subsection of the members of such constituent companies is not required if a copy of the plan of merger is given to every member of each subsidiary company to be merged unless that member agrees otherwise.";

(d) in subsection (9) -

(i) by deleting subparagraphs (d)(ii) and (iii) and substituting the following subparagraphs -

" (ii) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the constituent company, its affairs, or its property or any part thereof; and

(iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent company are, and continue to be, suspended or restricted;"; and

(ii) by deleting paragraphs (f) and (g) and substituting the following paragraphs -

" (f) in the case of a constituent company that is not a surviving company, a director's declaration that the constituent company has retired from any fiduciary office held or will do so immediately prior to merger or consolidation;

(g) an undertaking that a copy of the certificate of merger or consolidation under subsection (11) will be given to the members and creditors of the constituent company and that notification of the merger or consolidation will be published in the Gazette; and

(e) by inserting after subsection (15) the following subsection -

" (16) Any director's declaration pursuant to this section may be given in the form of a declaration or an affidavit, as the director may determine.".

Amendment of section 237 - merger or consolidation with foreign company

48. The principal Law is amended by repealing section 237 and substituting the following section -

"Merger or consolidation with overseas company

237. (1) Subject to section 239A, one or more companies incorporated under this Law may merge or consolidate with one or more overseas companies in accordance with subsections (2) to (18).

(2) Where the surviving or consolidated company is to be a company existing under this Law, in addition to compliance by each constituent company incorporated under this Law with section 233(3) to (10) the Registrar is required to be satisfied in respect of any constituent overseas company that -

(a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent overseas company and by the laws of the jurisdiction in which the constituent overseas company is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;

(b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent overseas company in the jurisdiction in which the constituent overseas company is existing;

(c) no receiver, trustee, administrator or other similar person has been appointed in any

jurisdiction and is acting in respect of the constituent overseas company, its affairs or its property or any part thereof;

(d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent overseas company are and continue to be suspended or restricted;

(e) the constituent overseas company is able to pay its debts as they fall due and the merger or consolidation is bona fide and not intended to defraud unsecured creditors of the constituent overseas company;

(f) in respect of the transfer of any security interest granted by the constituent overseas company to the surviving or consolidated company -

(i) consent or approval to the transfer has been obtained, released or waived;

(ii) the transfer is permitted by and has been approved in accordance with the constitutional documents of the constituent overseas company; and

(iii) the laws of the jurisdiction of the constituent overseas company with respect to the transfer have been or will be complied with;

(g) the constituent overseas company will, upon the merger or consolidation becoming effective, cease to be incorporated, registered or exist under the laws of the relevant foreign jurisdiction; and

(h) there is no other reason why it would be against the public interest to permit the merger or consolidation.

(3) Subsection (2)(a) to (g) shall be satisfied by filing with the Registrar a declaration of a director of the surviving or consolidated company to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met; and -

(a) the declaration shall include a statement of the assets and liabilities of the constituent overseas company made up to the latest practicable date before making the declaration; and

(b) a director of the surviving or consolidated company shall be deemed to have made due enquiry for the purposes of subsection (2)(a) to (g) and this subsection if such director has obtained from a director of the constituent overseas company a declaration that the requirements of subsection 2(a) to (g) have been met with respect to such constituent overseas company.

(4) Whoever, being a director, makes a false declaration under subsection (3) is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for five years, or both.

(5) In any proceedings for an offence under subsection (4), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(6) Where the surviving or consolidated company is to be established under this Law, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsection (2) in respect of the merger or consolidation have been complied with and that the name of the consolidated company complies with section 30, the Registrar shall register the plan of merger or consolidation including any new or amended memorandum and articles of association and issue a certificate of merger or consolidation under his hand and seal of office, and in the case of a consolidation section 27 shall apply in relation to the consolidated company.

(7) Where the surviving or consolidated company is to be an overseas company the Registrar is required to be satisfied, in addition to compliance with section 233(2) to (10) (excluding section 233(9)(g)), by each constituent

company incorporated under this Law, that -

(a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent overseas company and by the laws of the jurisdiction in which the constituent overseas company is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;

(b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent overseas company in any jurisdiction;

(c) no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the surviving company, its affairs or its property or any part thereof;

(d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the surviving company are suspended or restricted; and

(e) there are no reasons why it would be against the public interest to allow the merger or consolidation.

(8) Subsection (7)(a) to (d) shall be satisfied by filing with the Registrar a declaration of a director of each constituent company incorporated under this Law to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met; and a director of each constituent company incorporated under this Law shall be deemed to have made due enquiry for the purposes of subsection (7)(a) to (d) and this subsection (8) if such director has obtained from a director of the constituent overseas company a declaration that the requirements of

subsection (7)(a) to (d) have been met with respect to such constituent overseas company.

(9) Whoever, being a director, makes a false declaration under subsection (8) is guilty of an offence and liable on conviction to a fine of twenty thousand dollars or to imprisonment for five years, or both.

(10) Where the surviving or consolidated company is to be an overseas company, the surviving or consolidated overseas company shall file with the Registrar -

(a) an undertaking that it will promptly pay to the dissenting members of a constituent company incorporated under this Law the amount, if any, to which they are entitled under section 238; and

(b) such evidence of the merger or consolidation from the jurisdiction of the surviving or consolidated overseas company as the Registrar considers acceptable, such evidence to include the effective date of the merger or consolidation.

(11) The effect of a merger or consolidation where the surviving or consolidated company is to be an overseas company under this section is the same as in the case of a merger or consolidation under this Part if the surviving or consolidated company is incorporated or established under this Law, and all of the relevant provisions of this Part apply, except insofar as the laws of the jurisdiction of the surviving or consolidated overseas company otherwise provide.

(12) For the purposes of this section -

(a) any references in section 233 to the shares of any constituent company shall be deemed to include references to any other equity interests in such constituent company;

(b) any references in section 233 to memoranda and articles of association shall be deemed to include references to the equivalent

organisational documents of an overseas company; and

(c) any reference in section 233 or this section to a director of a company shall be deemed to include a reference to any officer, member or other person (howsoever called) in whom the management of an overseas company is vested.

(13) Where the surviving or consolidated company is to be an overseas company, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsections (7) and (10) have been complied with the Registrar shall, where the overseas company is the surviving or consolidated company, strike off constituent companies incorporated pursuant to this Law from the register and issue a certificate of strike off by way of merger or consolidation with an overseas company; and section 158 shall apply to the constituent companies so struck off.

(14) A certificate of strike off by way of merger or consolidation with an overseas company issued by the Registrar shall be *prima facie* evidence of compliance with all requirements of this Law in respect of such merger or consolidation.

(15) Subject to section 234, a merger or consolidation shall be effective on the date the plan of merger or consolidation is registered by the Registrar.

(16) The issuance of a certificate of merger or consolidation relating to the merger or consolidation of an overseas company registered under Part IX shall be deemed to constitute notice to the Registrar pursuant to section 192.

(17) Any declaration of a director pursuant to this section may be given in the form of a declaration or an affidavit, as the director may determine.

(18) The Registrar shall submit a copy of the certificate of strike off by way of merger or consolidation issued under subsection (13) to the Authority.”.

49. The principal Law is amended in section 238 by repealing subsection (15) and substituting the following subsection - Amendment of section 238 - rights of dissenters

" (15) Shares acquired by the company pursuant to this section shall be cancelled and, if they are shares of a surviving company, they shall be available for re-issue.".

50. The principal Law is amended in section 239 by repealing subsection (1) and substituting the following subsection - Amendment of section 239 - limitation on rights of dissenters

" (1) No rights under section 238 shall be available in respect of the shares of any class for which an open market exists on a recognised stock exchange or recognised interdealer quotation system at the expiry date of the period allowed for written notice of an election to dissent under section 238(5), but this section shall not apply if the holders thereof are required by the terms of a plan of merger or consolidation pursuant to section 233 or 237 to accept for such shares anything except -

(a) shares of a surviving or consolidated company, or depository receipts in respect thereof;
(b) shares of any other company, or depository receipts in respect thereof, which shares or depository receipts at the effective date of the merger or consolidation, are either listed on a national securities exchange or designated as a national market system security on a recognised interdealer quotation system or held of record by more than two thousand holders;
(c) cash in lieu of fractional shares or fractional depository receipts described in paragraphs (a) and (b); or
(d) any combination of the shares, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in paragraphs (a), (b) and (c).".

51. The principal Law is amended by inserting after section 239 the following section - Insertion of section 239A - prohibition on being a segregated portfolio company

"Prohibition on being a segregated portfolio company

239A. No constituent company incorporated under this Law or any consolidated company existing under this Law may be a segregated portfolio company.".

52. The principal Law is amended by inserting after section 243 the following Part - Insertion of Part XVIII - miscellaneous

"Part XVIII - Miscellaneous

"Amendment of Schedules

244. The Governor in Cabinet may by Order amend the Fourth Schedule or Fifth Schedule.

Regulations

245. The Governor in Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.".

Amendment of principal Law

53. The principal Law is amended by deleting the words "voluntary declaration" wherever they appear and substituting the word "declaration".

Insertion of Fourth Schedule and Fifth Schedule

54. The principal Law is amended by inserting after the Third Schedule the following Schedules -

"**FOURTH SCHEDULE**

Section 37C(1)

APPROVED STOCK EXCHANGES

The following are approved stock exchanges -

American Stock Exchange (AMEX)	Frankfurt Stock Exchange	New Zealand Stock Exchange
Athens Stock Exchange	Fukoka Stock Exchange	OMX Nordic Exchange
Australian Securities Exchange	The Gretai Securities Market of Taiwan	Osaka Securities Exchange
Barcelona Stock Exchange	Hamburg and Hannover Stock Exchange	Oslo Stock Exchange
Berlin Stock Exchange	Hong Kong Stock Exchange (including the Growth Enterprise Market)	Philadelphia Stock Exchange
Bermuda Stock Exchange	International Securities Exchange	Rio de Janeiro Stock Exchange
Bilbao Stock Exchange	Irish Stock Exchange	Sao Paulo Stock

		Exchange (Bovespa)
Bolsa de Comercio de Buenos Aires	Johannesburg Stock Exchange	Shanghai Stock Exchange Shenzhen, S.E.
Bolsa de Comercio de Santiago	Korea Exchange (including KOSPI and KOSDAQ Market Divisions)	Singapore Stock Exchange (including Catalist)
Bosla de Valores de Caracas	London Stock Exchange (including AIM)	Stuttgart Stock Exchange
Bolsa de Valores de Lima	Luxembourg Stock Exchange	SWX Stock Exchange
Bolsa Italiana SPA	Madrid Stock Exchange	Taiwan Stock Exchange
Boston Stock Exchange	Mexican Stock Exchange	Tel Aviv Stock Exchange
Bursa Malaysia (including the Main Market and the ACE Market)	Montreal Stock Exchange	The Stock Exchange of Thailand
Chicago Stock Exchange	Munich Stock Exchange	Tokyo Stock Exchange
Dusseldorf Stock Exchange	Nagoya Stock Exchange	Toronto Stock Exchange
Euronext Brussels	NASDAQ	Valencia Stock Exchange
Euronext Lisbon	National Stock Exchange	Vienna Stock Exchange
Euronext NV	New York Stock Exchange	
Euronext Paris	NYSE Arca	
Any stock exchange that the Registrar may from time to time designate as an approved stock exchange by way of a public notice which shall be gazetted.		

FIFTH SCHEDULE

Sections 26(4), 41(2), 45(2), 169(1), 184(2), 199(1) and 213(4) and (5)

PART 1

Section 26(4)

The fees payable upon the filing of a memorandum of association under section 26 are as follows -

(a) in respect of a non-resident company -
  (i) with no registered capital, or a registered capital not exceeding $42,000, a fee of $575; and
  (ii) with a registered capital exceeding $42,000, a fee of $815;
(b) in respect of an exempted company-
  (i) with no registered capital, or a registered capital not exceeding $42,000, a fee of $600;
  (ii) with a registered capital exceeding $42,000, but not exceeding $820,000 a fee of $900;
  (iii) with a registered capital exceeding $820,000 but not exceeding $1,640,000, a fee of $1,884; and
  (iv) with a registered capital exceeding $1,640,000, a fee of $2,468; and
(c) in respect of any other company-
  (i) with no registered capital or a registered capital not exceeding $42,000, a fee of $300; and
  (ii) with a registered capital exceeding $42,000, a fee of $500.

PART 2

Section 41(2)

The fees payable by a company, other than an exempted company, in January of each year after the year of its registration, to the Registrar under section 41(2) are as follows -

(a) in the case of a non-resident company -
  (i) with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $575; and
  (ii) with a registered capital exceeding $42,000, an annual fee of $815; and
(b) in the case of any other company -
  (i) with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $300; and
  (ii) with a registered capital exceeding $42,000, an annual fee of $500.

PART 3

Section 45(1)

The fees payable under section 45(2) on an increase of capital shall be in the case of -

(a) an exempted company which has a capital divided into shares, $500;
(b) an exempted company which has not a capital divided into shares, $500;
(c) a company other than an exempted company which has a capital divided into shares, $500; and
(d) a company which has not a capital divided into shares, $500.

PART 4

Section 169(1)

The annual fee payable by an exempted company, in January of each year after the year of its registration, to the revenues of the Islands under section 169(1) is as follows -

(a) in the case of an exempted company with no registered capital, or a registered capital not exceeding $42,000, an annual fee of $600;
(b) in the case of an exempted company with a registered capital exceeding $42,000 but not exceeding $820,000, an annual fee of $900;
(c) in the case of an exempted company with a registered capital exceeding $820,000 but not exceeding $1,640,000, an annual fee of $1,884; and
(d) in the case of an exempted company with a registered capital exceeding $1,640,000, an annual fee of $2,468.

PART 5

Section 184(2)

1. The fee payable by a foreign company under section 184(1) is $1,350.

2. The annual fee payable by a foreign company under section 184(2) is $1,350.

PART 6

Section 199(1)

The fee payable under section 199(1) wherever this Law provides for or requires the filing of any document, notice or return with the Registrar or the issue of any

certificate or the Registrar provides a copy of any document in respect of which no fee is elsewhere specifically provided is as follows -

(a)	filing any resolution, notice, return or any other document;	$50
(b)	issuing any certificate;	$100
(c)	providing a copy of any document (per folio of 72 words);	$100
(d)	general search fee;	$30
(e)		
	(i) filing a plan of merger or consolidation;	$600
	(ii) in the case where the surviving or consolidated company is a foreign company, each constituent company other than the surviving company pays a fee equal to three times the annual fee that would have been payable pursuant to section 169 in the January immediately preceding the filing of the plan of merger or consolidation by an exempt company having the same registered capital as the constituent company on the date of filing of the plan of merger or consolidation;	
(f)	filing an application in respect of a dual foreign name.	$100.

PART 7

Section 213(4) and (5)

1. The fee payable under section 213(4) to accompany an application under section 213(1) is $500.

2. The fees payable by a segregated portfolio company under section 213(5) are -

(a) an additional fee of $2,000; and
(b) an additional annual fee of $300 in respect of each segregated portfolio up to a maximum of $1,500.".

Passed by the Legislative Assembly the 11th day of April, 2011.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.