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Second Session Fifth Parliament Republic of Trinidad  
and Tobago

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REPUBLIC OF TRINIDAD AND TOBAGO

**Act No. 5 of 1997**

[L.S.]

AN ACT to amend the Companies Act, 1995.

*[ Assented to 11th April, 1997 ]*

ENACTED by Parliament of Trinidad and Tobago as Enactment  
follows:—

1. This Act may be cited as the Companies Short title  
(Amendment) Act, 1997.

2. In this Act, "the Act" means the Companies Act, Interpretation  
1995. Act No. 35  
of 1995

Section 4 amended

**3. Section 4 of the Act is amended—**

- (a) in the definition of “affiliate”, by deleting the words “affiliated company or”;
- (b) by deleting the definition of “articles” and substituting the following definition:

“articles” means, unless qualified, the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of dissolution, and articles of revival;”

- (c) in the definition of “associate”—

- (i) by deleting paragraph (a) and substituting the following paragraph:

“(a) a body corporate of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares carrying more than twenty per cent of the voting rights—

- (i) under all circumstances;

- (ii) by reason of the occurrence of an event that has occurred and is continuing,

or a currently exercisable option or right to purchase such shares or such convertible securities;”;

- (ii) in paragraph (c), by inserting after the word “trustee”, the words “, legal representative”;
- (d) by inserting after the definition of “auditor”, the following definition:
- “ “beneficial interest” means an interest arising out of the beneficial ownership of shares or debentures;”;
- (e) in the definition of “beneficial interest” or “beneficial ownership”, by deleting the words “ “beneficial interest” or”;
- (f) in the definition of “body corporate”, by deleting the words “within the meaning of this section”;
- (g) in the definition of “company”, by deleting the words “, continued or not discontinued” and substituting the words “or continued”;
- (h) by inserting after the definition of “company”, the following definition:
- “ “company limited by guarantee” means a company with or without a share capital whose articles set out the provisions required by section 9(2A) ;”;
- (i) by deleting the definition of “debenture” and substituting the following definition:
- “ “debenture” includes debenture stock and any bond or other instrument evidencing any indebtedness or guarantee of a company in respect of indebtedness whether secured or not, but shall not include a

cheque, promissory note or bill of exchange or endorsement thereon, a letter of credit issued by a bank nor an instrument evidencing a deposit account issued by a financial institution or a credit union within the meaning of the

Chap. 81:03 Co-operative Societies Act or an insurance company;”;

- (j) in the definition of “member”, by inserting after the words “non-profit company” in the first place where they occur, the words “or a company limited by guarantee” and by deleting the words “a member of a non-profit company” and substituting the words “a member of the company”;
- (k) in the definition of “Minister”, by deleting the word “finance” and substituting the words “the Registrar General’s Department”;
- (l) in the definition of “officer”, by deleting the words “appointed by the board of directors” and substituting the words “duly appointed”;
- (m) by inserting after the definition of “ordinary resolution”, the following definition:
  - “ “prescribed” means prescribed by rules made under section 464 or regulations made under section 507;”;
- (n) in the definition of “public company”, by inserting after the words “section 6”, the words “but does not include a former-Act company which was not a public company under the former Act at the commencement date”;
- (o) in the definition of “record”, by deleting the words “company or other”;

- (p) in the definition of “relative”, by inserting after the word “relative”, the words “in relation to a person” and by deleting the words “of such person” occurring in paragraph (a);
- (q) in the definition of “security interest”, by inserting after the word “mortgage,”, the word “assignment,” and by deleting the words “an obligation” and substituting the words “a debt or the performance of any other obligation”;
- (r) in the definition of “shareholder”, by deleting from the word “includes—” to the end and substituting the words “means a person described in section 107(1);”;
- (s) by deleting the definition of “special resolution” and substituting the following definition:

“ “special resolution” means a resolution proposed at a meeting of the company of which not less than twenty-one days’ notice specifying the intention to propose the resolution as a special resolution has been duly given and which is—

- (a) passed by a majority of not less than seventy-five per cent of the votes cast by the shareholders who voted in respect of the resolution; or
- (b) reduced to writing as a special resolution and signed by all the shareholders entitled to vote on the resolution;”;

(*t*) in the definition of “unanimous shareholder agreement”, by deleting the fullstop and substituting a semicolon; and

(*u*) by inserting after the definition of “unanimous shareholder agreement”, the following definition:

“ “unlimited liability company” means a company not having any limit on the liability of its members.”.

Section 5 amended

4. Section 5(1)(*a*) of the Act is amended by inserting after the word “another”, the word “body”.

Section 6 amended

5. Section 6 of the Act is amended—

(*a*) in subsection (2), by deleting the words “are part” and substituting the words “are deemed to be part” and by deleting the words “those others” and substituting the words “those other shares or debentures”; and

(*b*) by inserting after subsection (2), the following subsection:

“ (3) On the application of a company, the Commission may determine that shares or debentures of a company are not or were not part of a distribution to the public if the Commission is satisfied that such determination would not prejudice any shareholder or debenture holder of the company.”.

Section 7 repealed

6. Section 7 of the Act is repealed.

Section 8 amended

7. Section 8 of the Act is amended—

(*a*) in subsection (1), by inserting after the word “Registrar”, the words “and otherwise complying with the requirements of this Division”;

(b) in subsection (3)—

- (i) by deleting the words “If articles” and substituting the word “Articles”;
- (ii) by deleting the words “are accompanied” and substituting the words “shall be accompanied”; and
- (iii) by deleting the words “subsection (2),” and substituting the words “subsection (2) and that all requirements precedent to the formation of a company under this Act have been complied with, and”.

8. (1) Section 9(1) of the Act is amended—

Section 9 amended

- (a) in paragraph (b) by inserting after the word “unlimited”, the words “and if the liability of its members is limited whether it is limited by shares or by guarantee or by both shares and guarantee”;
- (aa) by inserting after paragraph (b) the following paragraph:
  - “(ba) whether it is a public company;”;
- (b) in paragraph (c), by inserting after the words “its classes of shares”, the words “, if any;” and
- (c) by deleting paragraph (d) and substituting the following paragraphs:
  - “(d) if the transfer or ownership of shares of the company is to be restricted, a statement to that effect and a statement as to the nature of such restrictions;

- (da) whether the pre-emptive rights under section 38 with respect to the issue of shares are to be varied and, if so, a statement as to the nature of such variations;
- (db) whether the power of the directors to make, amend or repeal the by-laws under section 66 is restricted and, if so, a statement as to the nature of such restrictions;”.

(2) Section 9 of the Act is amended by inserting after subsection (2), the following subsection:

“ (2A) The articles of a company limited by guarantee shall also set out—

- (a) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount; and
- (b) the number of members with which it is proposed to be registered.”.

(3) Section 9(3) of the Act is repealed and the following subsection is substituted:

“ (3) The articles may provide for anything permitted by this Act or any other law to be provided for by the by-laws of the company.”.

Section 14 amended

9. Section 14(1) of the Act is amended by deleting the words “part of” in both places where they occur and substituting in each place the words “the last word of”.

10. Section 15(a) of the Act is amended by deleting Section 15 amended the words “sections 493 and 494” and substituting the words “section 493”.

11. Section 18 of the Act is amended by inserting Section 18 amended after the words “revoke the name of”, the word “the”.

12. Section 19(2) of the Act is amended by deleting Section 19 amended the word “cereificate” and substituting the word “certificate”.

13. Section 21(1) of the Act is amended by inserting Section 21 amended after the words “this Act”, the words “and any other law”.

14. Section 24 of the Act is amended— Section 24 amended

(a) by renumbering the section as section 24(1);

(b) by deleting the word “No” and substituting the words “Subject to subsection (2), no”; and

(c) by inserting after subsection (1) as renumbered, the following subsection:

“ (2) Subsection (1) shall not apply to a charge the particulars of which are required to be registered under Part IV.”.

15. Section 25(b) of the Act is amended by inserting Section 25 amended after the word “notice”, the word “sent”.

16. Section 26(2)(c) of the Act is amended by deleting Section 26 amended the word “payrol” and substituting the word “parol”.

17. Section 28(1) of the Act is amended by deleting Section 28 amended the words “A company” and substituting the words “Subject to the provisions of the Registration of Deeds Act, a company”.

18. Section 29(1) of the Act is amended by deleting Section 29 amended the word “engraved” and substituting the word “signified”.

Section 35 amended

**19.** Section 35 of the Act is amended—

- (a) in subsection (6)(c), by inserting after the words “maintained for the”, the words “shares of the”;
- (b) in subsection (7)(b), by inserting after the words “so continued”, the words “and paid after it was so continued”;
- (c) in subsection (7)(c)—
  - (i) by deleting the word “account”;  
and
  - (ii) by renumbering subparagraphs (iii) and (iv) as subparagraphs (iv) and (v) respectively and by inserting after subparagraph (ii), the following subparagraph:  
“(iii) section 54.”; and
- (d) by inserting after subsection (7), the following subsections:

“ (8) When a former-Act company is continued under this Act, it may add to a stated capital account any consideration received by it for a share it issued.

(9) A company at any time may, subject to subsection (5), add to a stated capital account any amount it credited to a retained earnings or other surplus capital account.”.

Section 38 amended

**20.** Section 38 of the Act is amended—

- (a) in subsection (2), by inserting after the words “subsection (1)”, the words “and anything contained in the articles”; and

(b) by inserting after subsection (2), the following subsections:

“ (3) Subject to subsections (4) to (9), an offer required by subsection (1) shall be in writing and shall be made to a holder of shares either personally or by sending it by post (that is to say, prepaying and posting a letter containing the offer) to him or to his registered address or, if he has no registered address in Trinidad and Tobago, to the address in Trinidad and Tobago supplied by him to the company for the giving of notice to him, and if sent by post, the offer is deemed to be made at the time at which the letter would be delivered in the ordinary course of post.

(4) Where shares are held by two or more persons jointly, the offer may be made to the joint holder first named in the register of members in respect of the shares.

(5) In the case of the holder's death or bankruptcy, the offer may be made—

(a) by sending it by post in a prepaid letter addressed to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy by name, or by

the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address in Trinidad and Tobago supplied for the purpose by those so claiming; or

(b) until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(6) If the holder—

(a) has no registered address in Trinidad and Tobago and has not given to the company an address in Trinidad and Tobago for the service of notices on him; or

(b) is the holder of a share warrant,

the offer may be made by causing a notice specifying where a copy of the offer can be obtained or inspected, to be published in a daily newspaper circulating in Trinidad and Tobago.

(7) The offer shall state a period of not less than twenty-one days during which it may be accepted and the offer shall not be withdrawn before the end of that period.

(8) A requirement or authority contained in the articles of a company, if it is inconsistent with any of the provisions of subsections (3) to (7), has effect as a provision excluding subsection (3).

(9) Subsections (3) to (8) are without prejudice to any written law by virtue of which a company is prohibited, whether generally or in specified circumstances, from offering or allotting shares to any person.”.

**21.** Section 39 of the Act is amended by inserting Section 39 amended after the word “shares” in the first three places where it occurs, the words “or debentures”.

**22.** Section 41 of the Act is amended—

Section 41 amended

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

“ (1) Subject to subsection (2), and except as provided in sections 42 to 45, a company—

(a) shall not hold shares in itself or in its holding body corporate; and

(b) shall not permit any of its subsidiary bodies corporate to acquire shares of the company.”;

(b) in subsection (2), by inserting after the words “shares of the company”, the words “, except as may be permitted under sections 42 to 45,”.

Section 44 amended

23. Section 44(3) of the Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) the realizable value of the company’s assets would after the payment be less than the aggregate of—

(i) its liabilities; and

(ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a winding up, rateably with or before the holders of shares to be purchased or redeemed.”.

Section 47 amended

24. Section 47 of the Act is amended—

(a) by inserting after the words “shall not vote”, the words “those shares”; and

(b) by deleting the word “thereon”.

Section 48 amended

25. Section 48 of the Act is amended—

(a) in subsection (1), by deleting the words “by —” and substituting the words “for any purpose including, without limiting the generality of the foregoing, for the purpose of —”;

(b) by deleting subsection (1)(b) and substituting the following paragraph:

“(b) distributing to the holder of an issued share of any class or series of shares an amount not exceeding the stated capital of the class or series; or” ; and

(c) in subsection (3), by deleting the words “under of subsection (1)(a) or (b)” and substituting the words “for any purpose other than the purpose mentioned in subsection (1)(c)”.

26. Section 49(1) of the Act is amended by deleting <sup>Section 49 amended</sup> the word "227" and substituting the word "230".

27. Section 52(2) of the Act is amended by deleting <sup>Section 52 amended</sup> the words "of amendment or re-organization".

28. The Act is amended by inserting after section 52 <sup>Section 52A inserted</sup> the following section:

"Redemption  
and  
cancellation  
of  
debentures

52A. (1) Debentures issued, pledged, hypothecated or deposited by a company are not redeemed by reason only that the indebtedness evidenced by the debentures or in respect of which the debentures are issued, pledged, hypothecated or deposited is repaid.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust deed or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the company then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debentures."

29. The Act is amended by inserting after section 53, <sup>Section 53A inserted</sup> the following section:

"Sale of  
shares on  
commission

53A. The directors of a company may authorize the company to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the company from the company or from any other person or procuring or agreeing to procure purchasers for any such shares."

30. Section 55(1) of the Act is amended by <sup>Section 55 amended</sup> inserting after the words "Subject to", the words "section 54 and".

Section 59 amended

**31. Section 59 of the Act is amended—**

(a) in subsection (1), by deleting from the word “including” to the end and substituting the words “and in the case of a former-Act company such debt may include an amount unpaid in respect of a share issued by the company prior to its continuance under this Act and the articles may provide also for an existing right of forfeiture in respect of any such partly paid share.”; and

(b) by repealing subsection (2) and substituting the following subsection:

“ (2) A company may enforce a lien or right of forfeiture referred to in subsection (1) in accordance with its articles or by-laws.”.

Section 64 amended

**32. Section 64(2) of the Act is amended by inserting after the word “individual”, the words “or a body corporate”.**

Section 67 amended

**33. Section 67(1)(e) of the Act is amended by inserting after the word “(e)”, the words “unless a special meeting is called to pass a resolution pursuant to section 164.”.**

Section 72 amended

**34. Section 72 of the Act is amended by inserting after subsection (2), the following subsection:**

“ (3) Notwithstanding subsections (1) and (2), the by-laws of a company, other than a public company, may, in relation to alternate directors, make provisions in addition to or in substitution for the provisions of subsection (1) or (2).”.

Section 73 amended

**35. Section 73(d) of the Act is amended by deleting the word “distributes” and substituting the words “is deemed to distribute”.**

36. Section 76(3) of the Act is amended by inserting Section 76 amended after the words “subsection (1)”, the words “, unless the statement is included in or attached to a management proxy circular required by section 144”.

37. Section 77(4) of the Act is amended— Section 77 amended

- (a) in paragraph (a), by deleting the word “or”;
- (b) in paragraph (b), by deleting the full stop and substituting the words “; or”; and
- (c) by inserting after paragraph (b), the following paragraph:  
“ (c) by any other method.”.

38. Section 78 of the Act is amended by inserting Section 78 amended after subsection (2), the following subsection:

“ (3) Where the shareholders adopt an amendment to the articles of a company to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect the additional number of directors authorized by the amendment, and for that purpose, notwithstanding sections 218(2) and 481(2), on the issue of a certificate of amendment the articles are deemed to be amended as of the date the shareholders adopt the amendment to the articles.”.

39. Section 79(1) of the Act is amended by deleting Section 79 amended the word “fifteen” and substituting the word “thirty”.

40. Section 87 of the Act is amended by deleting the Section 87 amended word “33” and substituting the word “34”.

41. Section 93 of the Act is amended— Section 93 amended

- (a) in subsection (5)—
  - (i) by deleting from the words “may vote” to the words “the contract—”

and substituting the words “shall not be present at, form part of a quorum or vote on any resolution to approve a contract in which he has an interest, unless the contract—”;

- (ii) in paragraph (c), by inserting after the words “105;”, the word “or”;
- (iii) in paragraph (d), by deleting the words “; or” and substituting a full stop; and
- (iv) by deleting from paragraph (e) to the end;

(b) by inserting after subsection (5), the following subsection:

“ (6) Any contract referred to in subsection (1) together with all circumstances relevant thereto shall be reported to the shareholders not later than on the distribution of the next financial statements.”

Section 100  
amended

42. Section 100 of the Act is amended—

- (a) in subsection (1), by deleting the word “consents” and substituting the words “is deemed to have consented”;
- (b) in subsection (2), by deleting the words “, or consents to,”; and
- (c) in subsection (3)—
  - (i) by deleting the word “seven” and substituting the word “twenty-one”;
  - (ii) in paragraph (b), by deleting the full stop and substituting a comma; and

(iii) by inserting after paragraph (b), the following proviso:

“provided that, where a director fails to comply with paragraph (a) or (b) within the specified time, he may apply to the Court for relief, and the Court, if satisfied that failure to comply was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for complying with paragraph (a) or (b) for such period as the Court may think proper.”

43. Section 101(2)(a) of the Act is amended by Section 101 amended deleting the words “in the” and substituting the words “with a view to the”.

44. Section 102 of the Act is amended in the Section 102 amended marginal note by deleting the word “deviative” and substituting the word “derivative”.

45. Section 104 of the Act is repealed and the Section 104 repealed and substituted following section is substituted:

“Insurance of directors, etc.

104. A company may purchase and maintain insurance for the benefit of any person referred to in section 101 against any liability incurred by him—

(a) in his capacity as a director or officer of the company, except where the liability relates to his failure to act honestly and in good faith with a view to the best interest of the company; or



**50.** Section 111(a)(ii) of the Act is amended by deleting the words “if given” and substituting the words “is given”. Section 111  
amended

**51.** Section 113(1) of the Act is amended by inserting after the words “giving of”, the words “at least”. Section 113  
amended

**51A.** Section 115(2) of the Act is amended— Section 115  
amended

(a) by inserting before the word “consent”, the words “or, in the case of a class of shareholders all the shareholders of that class.”; and

(b) by deleting the words “of the company” in the second place where they occur.

**52.** Section 117(1) of the Act is amended by deleting the word “143” and substituting the word “144”. Section 117  
amended

**53.** Section 119 of the Act is amended— Section 119  
amended

(a) by deleting the word “114(2)” and substituting the word “117”; and

(b) in paragraph (b), by deleting the brackets.

**54.** Section 121 of the Act is amended— Section 121  
amended

(a) by inserting after the word “proposal” in the first place where it occurs the words “, or a statement referred to in section 117(2).”;

(b) by inserting after the word “proposal” in the second, third and fourth places where it occurs the words “or statement”; and

(c) by deleting the words “send him a statement” and substituting the words “notify him, in writing.”.

**55.** Section 125 of the Act is amended— Section 125  
amended

(a) in subsection (1), by deleting the words “A company” and substituting the words “A

public company or a company with twenty-five or more shareholders”;

(b) by inserting after subsection (1) the following subsection:

“ (1A) For the purposes of subsection (1), two or more joint shareholders shall be counted as one shareholder.”;

(c) in subsection (2), by inserting a comma after the words “subsection (3)” and by deleting the comma after the word “entitled”;

(d) in subsection (3), by deleting the words “vote his shares at the meeting” and substituting the words “vote such shares at the meeting, unless the transfer is one that a company is for any reason entitled to refuse to register pursuant to the provisions of its articles or by-laws”.

Section 127  
amended

56. Section 127(3) of the Act is amended by deleting the word “If” and substituting the words “Unless the by-laws otherwise provide, if”.

Section 133  
amended

57. Section 133(3)(c) of the Act is amended by deleting the word “or” and substituting the word “to”.

Section 138  
amended

58. Section 138(7) of the Act is amended by deleting from the words “The directors” to the word “may” and substituting the words “Notwithstanding any authorization given by the shareholders under subsection (1), the directors of a company may”.

Section 143  
amended

59. Section 143(2) of the Act is amended—

(a) by inserting after the words “Where a company”, the words “, other than a public company, ”; and

(b) by deleting the word “fifteen” and substituting the word “twenty-five”.

**60. Section 150 of the Act is amended—**Section 150  
amended**(a) in subsection (1)—****(i) by deleting the words “or the Registrar”; and****(ii) by deleting the word “Court” and substituting the word “Commission”;****(b) in subsection (2), by deleting the word “Court” and substituting the word “Commission”; and****(c) in subsection (3), by deleting the words “other than the Registrar”.**

**61. (1) Section 151(1)(c) of the Act is amended by inserting after the words “unanimous shareholder agreement”, the words “and any information required to be reported under section 93(6)”.**

Section 151  
amended

**(2) Section 151(3) of the Act is amended by deleting the word “comparable”.**

**62. Section 152 of the Act is repealed.**Section 152  
repealed**62A. Section 156(2) of the Act is repealed.**Section 156  
amended

**63. Section 157(2) of the Act is amended by deleting the word “he” in both places where it occurs and substituting in each place the word “it”.**

Section 157  
amended

**64. Section 158(2) of the Act is amended by inserting after the word “negligence”, the words “on terms and to an amount satisfactory to the Commission”.**

Section 158  
amended**65. Section 159 of the Act is amended—**Section 159  
amended

**(a) in subsection (1), by deleting from the words “person—” to the end and substituting the words “person is in the opinion of the Minister suitably qualified for such an appointment by reason of his knowledge and experience provided that such appointment shall not be for a period exceeding one year at a time”.**

(b) by repealing subsection (2) and substituting the following subsection:

“ (2) A person who was in practice in Trinidad and Tobago as an auditor on the commencement of this Act shall apply for an authorization to be appointed as an auditor of companies under subsection (1) not later than twelve months after the commencement of this Act.”.

Section 160  
repealed

66. Section 160 of the Act is repealed.

Section 161  
repealed and  
substituted

67. Section 161 of the Act is repealed and the following section is substituted:

“Ineligibility  
on ground of  
lack of  
independence

161. (1) Subject to subsection (5), a person or a partnership is disqualified from being an auditor of a company if he or any of the partners, as the case may be, is not independent of the company, any of its affiliates, or the directors or officers of any such company or its affiliates.

(2) For the purposes of this section—

(a) independence is a question of fact; and

(b) a person is deemed not to be independent if he or his business partner—

(i) is a business partner, a director, an officer or an employee of the company, of any of its affiliates, or of any director, officer or employee of any such company or its affiliates;

(ii) beneficially owns or controls directly or indirectly a material interest in the shares or

debentures of the company or any of its affiliates; or

- (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within two years of his proposed appointment as auditor of the company.

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his disqualification.

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on such terms as it thinks fit, which order may have retrospective effect.”.

**68.** Section 162 of the Act is amended by deleting the words “ineligible for appointment to” in both places where they occur and substituting in each place the words “disqualified from holding”. Section 162  
amended

**69.** Section 170 of the Act is amended— Section 170  
amended

(a) in subsection (1)—

- (i) by inserting after the words “auditor of the company”, the words

“or a former auditor who was engaged in the auditing of the financial statements to be considered at such meeting”; and

(ii) by deleting the words “the auditor shall attend” and substituting the words “the auditor or former auditor, as the case may be, shall attend”;

(b) by repealing subsection (3) and substituting the following subsection:

“ (3) An auditor or former auditor of a company who fails without reasonable cause to comply with subsection (1) is guilty of an offence.”.

Section 171  
amended

70. Section 171 of the Act is amended by inserting after subsection (2), the following subsections:

“ (3) No person shall accept an appointment or consent to be appointed as auditor of a company if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the circumstances and the reason why, in that auditor’s opinion, he is to be replaced.

(4) Notwithstanding subsection (3), a person otherwise qualified may accept an appointment or consent to be appointed as auditor of a company if, within fifteen days after making the request referred to in that subsection, he does not receive a reply.

(5) Unless subsection (4) applies, an appointment as auditor of a company of a person who has not complied with subsection (3) is void.”.

**71. Section 178 of the Act is amended—**Section 178  
amended

- (a) in subsection (4)(a), by deleting the word “or” occurring in the second line; and
- (b) in subsection (5), by deleting the word “seven” and substituting the word “fourteen”.

**72. Section 180(2) of the Act is amended by deleting the word “five” and substituting the word “seven”.**Section 180  
amended**73. Section 181(2) of the Act is amended by deleting paragraph (a) and substituting the following paragraph:**Section 181  
amended

- “(a) a person has a substantial shareholding in a company if he holds, by himself or by his nominee, shares in the company entitling him to cast on his own behalf at least ten per cent of the total votes entitled to be cast at any general meeting of the company;”.

**74. Section 184(1) of the Act is amended—**Section 184  
amended

- (a) in paragraph (a), by inserting before the word “notice”, the word “a”; and
- (b) by deleting the words “in the case of a public company,”.

**75. Section 186 of the Act is amended—**Section 186  
amended

- (a) in subsection (3), by deleting the word “A” and substituting the words “Subject to the provisions of the articles or the by-laws, a”; and
- (b) in subsection (4)—
  - (i) by deleting the word “A” and substituting the words “Subject to the provisions of the articles or the by-laws, a”; and

- (ii) by deleting the words “beneficially entitled to” and substituting the words “the beneficial owner of”.

Section 187  
amended

**76.** Section 187 of the Act is amended—

- (a) in subsection (2), by deleting the word “The” and substituting the words “Subject to subsection (3), the ”; and
- (b) in subsection (3), by deleting from the word “When” to the words “outside Trinidad and Tobago” and substituting the words “Accounting records of a company may be kept at a place outside Trinidad and Tobago provided that”.

Section 194  
amended

**77.** Section 194(1) of the Act is repealed and the following subsection is substituted:

“ (1) A company shall, not later than thirty days after each anniversary date of its continuance incorporation or amalgamation under this Act, deliver to the Registrar a return in the prescribed form containing the prescribed information made up to such anniversary date and accompanied by the prescribed fees.”.

Section 195  
amended

**78.** Section 195 of the Act is amended—

- (a) in subsection (4), by deleting the words “covering trust deed” and substituting the words “trust deed securing the same”; and
- (b) in subsection (5), by deleting the word “are” and substituting the word “and”.

Section 196  
amended

**79.** Section 196 of the Act is amended—

- (a) in subsection (2), by deleting the word “unanimous” and substituting the word “unanimous”;

(b) in subsection (4)—

(i) by deleting the word “A” and substituting the words “Subject to any rights of pre-emption or other restrictions on the transfer of shares set out in the articles or noted on the share certificate, a”;

and

(ii) in paragraph (a), by deleting the word “personal” and substituting the word “legal”.

**80.** Section 197(1) of the Act is amended by inserting after the word “A”, the word “public” and inserting after the words “the company of the share”, the word “certificate”. Section 197 amended

**81.** Section 199 of the Act is amended—

Section 199 amended

(a) in subsection (3), by deleting the word “Notwithstanding” and substituting the words “Subject to subsection (4) but otherwise notwithstanding”; and

(b) in subsection (4) by inserting after the word “articles”, the words “or noted on the share certificate”.

**82.** Section 203(e) of the Act is amended by deleting the words “those shares of his” and substituting the words “the share certificates for his shares”. Section 203 amended

**83.** Section 208(c)(iii) of the Act is amended by inserting after the word “receiving”, the words “the relevant share certificates for”. Section 208 amended

Section 212  
amended

**84.** Section 212 of the Act is amended—

- (a) in paragraph (c), by deleting the word “or” in the second place where it occurs;
- (b) in paragraph (d), by deleting the full stop and substituting a semi-colon; and
- (c) by inserting after paragraph (d), the following paragraph:

“ (e) order that any party who has unreasonably caused or delayed the proceedings or otherwise increased the costs thereof do pay the whole or part of the reasonable costs of the Commission or of the other parties to the proceedings.”

Section 213  
amended

**85.** Section 213(2) of the Act is amended by deleting paragraph (c) and substituting the following paragraph:

- “ (c) the requirements of the offeror or the offeree company in respect of information to be disclosed to shareholders of the offeree company and of the offeror, if a company;”

Section 214  
amended

**86.** Section 214(1) of the Act is amended—

- (a) in paragraph (c), by inserting after the word “issue”, the words “and in the case of a company limited by guarantee to increase the number of members”;
- (b) in paragraph (n), by inserting after the word “articles”, the words “but not, in the case of a company limited by guarantee, the provisions referred to in paragraph (a) of section 9(2A)”.

87. Section 217(1) of the Act is amended by deleting <sup>Section 217</sup> the words “Subject to any revocation under subsection <sup>amended</sup> (2) of section 214, after” and substituting the word “After”.

88. Section 227 of the Act is amended—

<sup>Section 227</sup>  
<sup>amended</sup>

- (a) in subsection (1)(a), by inserting after the word “restricting”, the words “or constraining”;
- (b) in subsection (3), by deleting the words “The articles of a company that is not a public company may provide that a” and substituting the word “A”;
- (c) in subsection (4), by inserting after the words “the order made”, the words “, but in determining the fair value of the shares any change in value reasonably attributable to the anticipated adoption of the resolution or to the order made under section 238 shall be excluded”.

89. Section 228(4) of the Act is amended by inserting <sup>Section 228</sup> after the words “the dissenting shareholder”, the words <sup>amended</sup> “or if the certificate was sent by a person holding the certificate as security, the company may return the certificate to such person”.

90. Section 229(2) of the Act is amended by deleting <sup>Section 229</sup> the words “cross out” and substituting the word <sup>amended</sup> “cancel”.

91. Section 235(2)(a) of the Act is amended by <sup>Section 235</sup> deleting the word “consents” and substituting the <sup>amended</sup> words “is deemed to consent”.

92. Section 238(2)(b) of the Act is amended by <sup>Section 238</sup> deleting the word “are” and substituting the word <sup>amended</sup> “is”.

Section 242  
amended

**93.** Section 242(2) of the Act is amended—

- (a) in paragraph (c), by deleting the words “that is oppressive or unfairly prejudicial to,”;
- (b) by deleting the words “or that unfairly” and substituting the words “that is oppressive or unfairly prejudicial to, or that unfairly”.

Section 243  
amended

**94.** Section 243(1) of the Act is amended by deleting the words “of its subsidiary” and substituting the words “or its subsidiary”.

Section 251  
amended

**95.** Section 251 of the Act is amended—

(a) in subsection (1)—

- (i) by deleting the word “twenty-eight” and substituting the word “thirty”;
- (ii) in paragraph (a), by inserting after the words “created or evidenced”, the words “or a duly executed duplicate original thereof”;
- (iii) by deleting paragraph (b) and substituting the following paragraph:
  - “(b) a copy of the instrument certified by an attorney-at-law acting in the matter, as a true and complete copy of the instrument as executed;”;
  - and
- (iv) by deleting the words “so for as” and substituting the words “as against the liquidator and any creditor of the company so far as”; and

(b) by repealing subsection (3) and substituting the following subsection:

“ (3) This section applies to the following charges and any variation or postponement thereof:

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (d) a charge on land, wherever situate, or any interest therein;
- (e) a charge on book debts of the company;
- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on a ship or any share in a ship;
- (h) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright; and
- (i) such other charges as the Minister may, by Order, specify.”.

**96. Section 252 of the Act is amended—**

Section 252  
amended

- (a) in subsection (2), by deleting the word “twenty-eight” and substituting the word “thirty”; and

(b) by repealing subsection (3) and substituting the following subsection:

“ (3) The statement referred to in subsection (2) shall be accompanied by the instrument containing the charge or the duly executed duplicate original thereof or a copy of that instrument certified by the attorney-at-law preparing the same as a true and complete copy of the instrument as executed; but if there is no such other instrument the statement shall be accompanied by a copy of one of the debentures of the series and a statutory declaration by an officer of the company or an attorney-at-law acting in the matter verifying the copy to be a true and complete copy.”

Section 253  
repealed

**97.** Section 253 of the Act is repealed.

Section 254  
amended

**98.** Section 254 of the Act is amended by deleting the words “to 253” and substituting the words “or 252”.

Section 256  
amended

**99.** Section 256(2)(b) of the Act is amended by inserting before the word “Registrar”, the word “the”.

Section 257  
amended

**100.** Section 257(1) of the Act is amended—

(a) by deleting the word “twenty-eight” and substituting the word “thirty”; and

(b) by deleting from paragraph (b) to the end and substituting the following paragraph:

“ (b) the instrument or duplicate instrument or a copy of the instrument certified by an attorney-at-law as provided for in section 251(1)(b).”

Section 269  
amended

**101.** Section 269(2) of the Act is amended by deleting the word “material”.

102. Section 282(1) of the Act is amended by Section 282 amended inserting after the words “its debentures”, the words “to the public”.

103. Section 285 of the Act is amended by inserting Section 285 amended after the word “Sections”, the words “281(3) and”.

104. Section 307 of the Act is amended by inserting Section 307 amended after subsection (3), the following subsection:

“ (4) A non-profit company may be a company limited by guarantee.”.

105. Section 309 of the Act is amended— Section 309 amended

(a) in paragraph (c), by deleting the word “and”;

(b) in paragraph (d), by deleting the full stop and substituting the words “; and”; and

(c) by inserting after paragraph (d), the following paragraph:

“ (e) whether the liability of members of the company is limited by guarantee.”.

106. Section 316 of the Act is amended— Section 316 amended

(a) by renumbering the section as section 316(1);

(b) by deleting the word “Upon” and substituting the words “Subject to subsection (2), upon”; and

(c) by inserting after subsection (1) as renumbered, the following subsection:

“ (2) Upon the dissolution of a non-profit company whose profits are exempt from corporation tax under section 6(1) of the Corporation Tax Act, the company shall, after satisfaction of all its debts and liabilities, give or transfer any remaining property to such other non-profit company enjoying a similar

exemption, as the members may, with the approval of the Board of Inland Revenue, determine.”.

Section 318  
amended

**107.** Section 318 of the Act is amended—

(a) in subsection (1)—

(i) by deleting paragraph (e) and substituting the following paragraph:

“ (e) a list of its corporate instruments;”; and

(ii) by deleting paragraph (h) and substituting the following paragraph:

“ (h) any restrictions on the business that the company may carry on;”;

(b) in subsection (2)(a), by deleting the words “two directors” and substituting the words “an officer” and by deleting the word “continuance” and substituting the word “registration”.

Section 319  
amended

**108.** Section 319 of the Act is amended—

(a) by deleting the marginal note and substituting the following marginal note: “Registration of external companies registered under former Act”;

(b) in subsection (1), by deleting—

(i) the word “twelve” and substituting the word “eighteen”; and

(ii) the words “continuance under this Act” and substituting the words “registration under this Division”;

(c) in subsection (2)—

(i) by deleting the word “continuance” and substituting the word “registration”; and

(ii) by deleting the words “in compliance with section 481”;

(d) in subsection (3)—

(i) by deleting the words “Until the expiration of twelve months from the commencement date” and substituting the words “Upon registration under this Act”; and

(ii) by deleting the words “338,339,”.

109. Section 320 of the Act is amended—

Section 320  
amended

(a) by deleting the words “sections 493 and 494” and substituting the words “section 493(b) to (f)”; and

(b) by deleting the words “or continued”.

110. Section 321 of the Act is amended—

Section 321  
amended

(a) by deleting the words “been continued from” and substituting the words “been constituted by”; and

(b) by deleting the words “were continued by” and substituting the word “constitute”.

111. Section 323(3)(a) of the Act is amended by deleting the words “; and” and substituting the words “; or”.

Section 323  
amended

112. Section 325(2) of the Act is repealed and the following subsection is substituted:

Section 325  
amended

“ (2) Subject to the provisions of the Registration of Deeds Act where that Act applies, any deed of any external company registered under this Division which may be executed out of Trinidad and Tobago may be registered in Trinidad and Tobago if executed under the seal of such company or, if no provision is made in the corporate instruments of such company for a seal, if executed on behalf of the company by not less than two officers in accordance with the corporate

instruments of such company in the presence of one witness at least; and the execution of such deed and that the seal thereto affixed is the seal of the company or that the signatures of the directors, officers or other persons affixed thereto are the proper signatures of such officers or other persons and that the same was executed in conformity with the corporate instruments of such company may be proved by the affidavit or solemn declaration of one of such witnesses or of the secretary or other officer of the company executing such deed to be sworn or made before a notary public.”.

Section 326  
amended

113. Section 326(1) of the Act is amended by deleting the words “but subject to his discretionary powers under this Division”.

Section 327  
amended

114. Section 327 of the Act is amended by deleting the words “in accordance with its certificate of registration”.

Section 328  
repealed

115. Section 328 of the Act is repealed.

Section 329  
amended

116. Section 329(2) of the Act is amended by inserting after the word “exist”, the words “or ceases to carry on business in Trinidad and Tobago”.

Section 331  
repealed  
and substituted

117. Section 331 of the Act is repealed and the following section is substituted:

“Previous  
activities

331. Registration or revival of registration under this Act of an external company retroactively makes lawful all previous acts of the company otherwise unlawful by reason only of non-registration as though the company had been registered at the time of those acts but this section does not affect the unlawfulness of any such acts for any other reason or for the purpose of a prosecution for any offence under this Division.”.

**118. Section 332 of the Act is amended—**Section 332  
amended

- (a) in subsection (1)—
- (i) in paragraph (b), by deleting from the words “to reflect” to the end and substituting the words “; or”;
  - (ii) in paragraph (c), by deleting the words “; or” and substituting a comma;
  - (iii) by deleting paragraph (d);
  - (iv) by deleting the words “duly certified”; and
  - (v) by deleting the words “or ordered to be made” and substituting the words “certified in accordance with section 318(2)(a)”;
- (b) in subsection (2), by deleting the words “of name” and the words “, and enter a record of such other changes in the register as he considers to be in the public interest”;
- (c) by repealing subsection (3) and substituting the following subsection:
- “ (3) Within thirty days after a change is made among its directors, an external company shall deliver to the Registrar a notice in the prescribed form setting out the change and the prescribed fee, and the Registrar shall file the notice.”.

**119. Section 333 of the Act is amended—**Section 333  
amended

- (a) by repealing subsection (1) and substituting the following subsection:
- “ (1) An external company shall, not later than thirty days after the anniversary date of its registration under this Act, deliver to the Registrar an annual return in the prescribed form containing the prescribed information made up to such anniversary date and accompanied by the prescribed fees.”;

(b) by repealing subsection (3).

Section 334  
amended

**120.** Section 334 of the Act is amended—

(a) in subsection (1)—

- (i) by deleting the word “that” and substituting the words “required to be registered under this Act and which”;
- (ia) by inserting after the word “suit”, the words “, counterclaim”.
- (ii) by inserting after the word “maintain”, the words “, without leave of the Court,”;
- (iii) by inserting after the word “suit”, the word “, counterclaim”;
- (iv) by deleting from the words “in respect of” to the end and substituting the words “but may be made a defendant to a suit.”;

(b) in subsection (2)—

- (i) by inserting after the words “may then”, the words “, upon such terms as to costs as the Court may order,”;
- (ii) by deleting the words “in respect of the contract described in subsection (1)”;
- (iii) by inserting a full stop after the words “under that subsection” and deleting from the words “, whether or not” to the end; and

(c) by repealing subsections (4) and (5).

Section 335  
amended

**121.** Section 335 of the Act is amended—

(a) by deleting paragraph (a) and substituting the following paragraph:

“(a) where it exhibits its name at its principal office in Trinidad and Tobago, cause the jurisdiction in which it is incorporated to be exhibited also, and if the liability

of its members is limited, a notice of that fact; and”;

(b) in paragraph (b)—

- (i) by deleting the word “country” and substituting the word “jurisdiction”;
- (ii) by inserting after the word “all” the words “name plates, if any,”; and
- (iii) by deleting the semi-colon and substituting the words “originating in Trinidad and Tobago,”.

122. Section 336 of the Act is repealed.

Section 336  
repealed

123. Section 337 of the Act is amended—

Section 337  
amended

- (a) by deleting the words “, 151 to 174, 493 and 494” and substituting the words “and 493(b) to (f)”;
- (b) by deleting the words “Division 2 of Part VII” and substituting the words “Divisions 2 and 4 of Part VII”.

124. Section 338 of the Act is repealed and the following section is substituted:

Section 338  
repealed  
and substituted

“Application  
of Division

338. This Division does not apply to an external company.”.

125. Section 339 of the Act is repealed.

Section 339  
repealed

126. Section 340 of the Act is amended—

Section 340  
amended

- (a) in subsection (1), by deleting the word “Every” and substituting the words “Subject to subsection (1A), every”;
- (b) by inserting after subsection (1), the following subsection:
  - “ (1A) Every former Act company which is a public company shall, within twelve months after the commencement date, apply to the Registrar for a certificate of continuance under this Act.”; and
- (c) by repealing subsection (2).

- Section 341 repealed **127.** Section 341 of the Act is repealed.
- Section 345 amended **128.** Section 345(2) of the Act is amended by deleting the words “issued pursuant to section 39(1)” and substituting the words “recording conversion privileges, options, or rights to acquire shares”.
- Section 346 amended **129.** Section 346 of the Act is amended—
- (a) by renumbering the section as section 346(1);
  - (b) in paragraph (a), by inserting after the word “sue”, the words “or counterclaim”;
  - (c) in paragraph (b), by inserting after the word “company”, the words “without leave of the Court”;
  - (d) in paragraph (c)—
    - (i) by deleting the words “or chief executive officer”;
    - (ii) by deleting the words “its undertaking” and substituting the word “business”;
  - (e) by inserting after subsection (1) as renumbered, the following subsection:
    - “ (2) Notwithstanding subsection (1), when a company described in that subsection is issued a certificate of continuance, the company may then, upon such terms as to costs as the Court may order, maintain an action, suit or other proceeding as though the company had never been disabled under that subsection.”
- Section 347 repealed **130.** Section 347 of the Act is repealed.
- Section 349 amended **131.** Section 349 of the Act is amended—
- (a) in subsection (1), by inserting after the word “debts”, the words “and liabilities, and the costs, charges” and by deleting the words “members and past members” and substituting the word “contributories”; and

(b) in subsection (2), by inserting after paragraph (a), the following paragraph:

“ (aa) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;”.

**132.** Section 351 of the Act is amended by inserting Section 351 amended in appropriate alphabetical sequence, the following definition:

“ “affairs”, in relation to a company, includes a business carried on by the company;”.

**133.** Section 356 of the Act is amended— Section 356 amended

(a) in subsection (1), by deleting paragraph (c) and substituting the following paragraph:

“ (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company;”.

(b) by repealing subsection (2).

**134.** Section 357(2)(a) of the Act is amended by Section 357 amended deleting the word “lease” and substituting the word “least”.

**135.** Section 370(2) of the Act is amended by deleting Section 370 amended the word “previously” and substituting the word “provisionally”.

**136.** Section 371 of the Act is amended by deleting Section 371 amended the words “Subject to section 370(2), the” and substituting the word “The”.

Section 373 amended **137.** Section 373(5) of the Act is amended by deleting the words “this Act” and substituting the words “section 450”.

Section 386 amended **138.** Section 386(5) of the Act is amended by deleting the word “which” and substituting the word “with”.

Section 389 amended **139.** Section 389 of the Act is amended by inserting after subsection (1), the following subsection:

“ (1A) The Court in making such an order may, in the case of an unlimited liability company, allow to the contributory by way of set off any money due to him or to the estate which he represents from the company in any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit.”

Section 399A  
inserted

**140.** The Act is amended by inserting after section 399, the following section:

“Power to  
restrain  
fraudulent  
persons from  
managing  
companies

399A. (1) Where an order has been made for winding up a company by the Court, and the Official Receiver has made a further report under this Act stating that, in his opinion a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, on the application of the Official Receiver, order that that person, director or officer shall not without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

(2) The Official Receiver shall, where he intends to make an application under subsection (1) give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the Official Receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the Court to any matters which appear to him to be relevant, and on any such application the Official Receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he shall be guilty of an offence.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.”

141. Section 402(e) of the Act is deleted and the Section 402 amended following paragraph is substituted:

“ (e) the fixing of the time within which debts and claims shall be proved, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.”

- Section 403 amended **142.** Section 403(1) of the Act is amended—
- (a) by inserting after the word “have”, the word “been”; and
  - (b) by deleting the words “, if the liquidator makes an application in that behalf”.
- Section 405 amended **143.** Section 405(1) of the Act is repealed and the following subsection is substituted:
- “ (1) A company shall be wound up voluntarily—
- (a) when the period, if any, fixed for the duration of the company by its articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company has passed an ordinary resolution requiring the company to be wound up voluntarily;
  - (b) if a general meeting so resolves by special resolution; or
  - (c) if the company resolves by ordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.”.
- Section 406 amended **144.** Section 406(2) of the Act is amended by inserting after the word “offence”, the words “and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company”.
- Section 410 amended **145.** Section 410(4) of the Act is repealed.
- Section 410A inserted **146.** The Act is amended by inserting after the heading “Provisions Applicable Only to Members’ Voluntary Winding up”, the following section:
- “Application of sections 411 to 417 **410A.** Sections 411 to 417 shall apply only in relation to a members’ voluntary winding up.”.

147. Section 412 of the Act is amended—

Section 412 amended

- (a) in subsection (1), by deleting the words “the the” and substituting the word “the”; and
- (b) in subsection (3) by inserting after the words “this Act or by”, the words “the articles or”.

148. Section 413 of the Act is amended—

Section 413 amended

- (a) in subsection (1)—
  - (i) by deleting the word “corporation” and substituting the words “body corporate”;
  - (ii) by inserting after the words “receive in compensation”, the words “or part compensation”;
- (b) in subsection (2), by inserting after the words “transferor company, and”, the words “,subject to subsection (3),”.

149. The Act is amended by inserting after the heading “Provisions Applicable to a Creditors’ Voluntary Winding up”, the following section:

Section 417A amended

“Application  
of sections  
418 to 425

417A. Sections 418 to 425 shall apply only in relation to a creditors’ voluntary winding up.”.

150. Section 418(6) of the Act is amended by deleting the words “or, as the case may be, each of the directors is” and substituting the words “, the directors or director, as the case may be, shall be”.

Section 418 amended

151. The Act is amended by inserting after the heading “Provisions Applicable to Every Voluntary Winding up”, the following section:

Section 425A amended

“Application  
of sections  
426 to 433

425A. Sections 426 to 433 shall apply to every voluntary winding up, whether a members’ or creditors’ winding up.”.

- Section 426 amended **152.** Section 426 of the Act is amended by deleting the word “equally” and substituting the words “*pari passu*”.
- Section 427 amended **153.** Section 427 of the Act is amended by inserting after subsection (4), the following subsection:
- “ (5) Notwithstanding the definition of “special resolution” in section 4, a special resolution under this section may be called on the same notice as an ordinary resolution.”.
- Section 435 amended **154.** Section 435 of the Act is amended—
- (a) in subsection (1)(a) by deleting the word “are” and substituting the word “became”;
  - (b) in subsection (5)—
    - (i) by inserting after the words “which priority”, the word “is”;
    - (ii) in paragraph (b), by inserting after the words “company, and”, the word “be”.
- Section 439 amended **155.** Section 439(1) of the Act is amended by deleting the word “corporations” and substituting the words “bodies corporate”.
- Section 441 amended **156.** Section 441(1) of the Act is amended—
- (a) in paragraph (a), by inserting after the semi-colon, the word “and”;
  - (b) in paragraph (b), by deleting the words “; and” and substituting a full stop; and
  - (c) by deleting paragraph (c).
- Section 442 amended **157.** Section 442 of the Act is amended—
- (a) in subsection (1), by deleting the words “Subject to subsection (3), where” and substituting the word “Where”;
  - (b) in subsection (2), by deleting the words “Subject to subsection (3), where” and substituting the word “Where”; and
  - (c) by repealing subsection (3).

**158. Section 443 of the Act is amended—**

Section 443 amended

**(a) in subsection (1)—**

- (i) by inserting after the word “present”, the words “director or”; and
- (ii) by deleting paragraph (p) and substituting the following:

“ (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up, is guilty of an offence.”; and

**(b) by repealing subsection (4) and substituting the following subsection:**

“ (4) For the purposes of this section and sections 444 to 449, “officer” includes any director and any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.”.

**159. Section 447 of the Act is amended—**

Section 447 amended

**(a) in subsection (1)—**

- (i) by deleting the word “carred” and substituting the word “carried”;
- (ii) in paragraph (c), by deleting the word “asset” and substituting the word “assets”; and

(b) by inserting after subsection (4), the following subsections:

“ (4A) The Court may, in the case of any person in respect of whom a declaration has been made under subsection (1), or who has been convicted of an offence under subsection (3), order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction on indictment to imprisonment for two years, or on summary conviction to imprisonment for six months, and to a fine of ten thousand dollars.

(4B) In subsection (4A), the expression “the Court” in relation to the making of an order, means the Court by which the declaration was made or the Court before which the person was convicted, as the case may be.

(4C) It shall be the duty of the Official Receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4A), and on the hearing of an application under that subsection or under subsection (1) the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.”.

**160.** Section 450 of the Act is amended by Section 450 amended deleting the word "corporation" in both places where it occurs and substituting the words "body corporate".

**161.** The Act is amended by inserting after Section 450A inserted section 450, the following section:

"Enforcement  
of duty of  
liquidator to  
make  
returns, etc.

450A. (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a liquidator in respect of any default referred to in subsection (1)."

**162.** Section 456(1) of the Act is amended by Section 456 amended deleting the word "liquidator" in the second place where it occurs and substituting the word "liquidation".

Section 457 amended **163.** Section 457 of the Act is amended by inserting after subsection (2), the following subsection:

“ (3) For the purpose of ascertaining and getting in any money payable into Court in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 135 of the Bankruptcy Act for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.”

Section 457A inserted **164.** The Act is amended by inserting after section 457, the following section:

“Resolutions  
passed at  
adjourned  
meetings of  
creditors and  
contributors

457A. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.”

Section 458 amended **165.** Section 458 of the Act is amended by renumbering the section as section 458(1) and by inserting after subsection (1) as renumbered, the following subsections:

“ (2) In the case of creditors, regard shall be had to the value of each creditor’s debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the by-laws.”

Section 463 amended **166.** Section 463(4) of the Act is amended by deleting the word “commission” and substituting the word “commissions”.

**167.** Section 465(1) of the Act is amended—

Section 465 amended

- (a) in paragraph (c), by deleting the words “any body corporate not incorporated or continued under this Act, and”;
- (b) in paragraph (e), by deleting the words “any society” and substituting the words “a friendly society established under the Friendly Societies Act or a society established under the Building Societies Act or any other society”;
- (c) by deleting the full stop and substituting the words “; or” and by inserting after paragraph (e), the following paragraph:
  - “ (f) a former-Act company.”

**168.** Section 466(2)(b) of the Act is amended—

Section 466 amended

- (a) by inserting after the words “against any member for”, the word “any”; and
- (b) by deleting the words “three weeks” and substituting the words “ten days”.

**169.** Section 469 of the Act is amended—

Section 469 amended

- (a) by repealing subsection (2) and substituting the following subsection:
  - “ (2) In the case of an unregistered company the place of incorporation or origin of which is not in a proclaimed State the provisions of sections 462 and 463 shall apply with such adaptations as may be necessary in respect of an unregistered company.”;
- (b) in subsection (3), by deleting the words “this section” in the first place where they occur and substituting the words “subsection (1)”.

**170.** Section 471 of the Act is amended by deleting the words “or telefax” and substituting the words “telefax or such other means as the Registrar may approve,”

- Section 475 amended** 171. Section 475 of the Act is amended by inserting after the word “mail”, the words “, unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at that time or at all”.
- Section 476 amended** 172. Section 476 of the Act is amended by inserting after the word “shareholder” in the first place where it occurs, the words “by prepaid post”.
- Section 484 amended** 173. Section 484(2) of the Act is amended by deleting the words “affidavit or affirmation” and substituting the words “statutory declaration or otherwise by oath or affirmation to the satisfaction of the Registrar”.
- Section 489 amended** 174. Section 489(1) of the Act is amended by deleting the words “of other body corporate” and substituting the words “or other body corporate, including an external company”.
- Section 493 amended** 175. Section 493 of the Act is amended—
- (a) in paragraph (a), by inserting after the word “firm,” in the first place where it occurs, the words “any registered trade mark or any well-known trade mark as determined under section 13A of the Trade Marks Act,”; and
  - (b) by deleting paragraph (b) and substituting the following paragraphs:
    - “ (b) shall not be primarily a geographic name used alone unless the applicant establishes to the satisfaction of the Registrar that the name has through use acquired and continues to have a secondary meaning;
    - (ba) shall not be one that is likely to be confusing with that of a company that was dissolved;”;

(c) by deleting paragraph (d) and substituting the following paragraph:

“ (d) shall not contain the word or words “credit union”, “co-operative”, or “co-op” when it connotes a co-operative venture;” and

(d) in paragraph (f), by inserting after the word “regulations”, the words “or a name that is, in the opinion of the Registrar, for any reason, objectionable”.

176. Section 494 of the Act is repealed.

Section 494 repealed

177. Section 496 of the Act is repealed and the following section is substituted:

Section 496 repealed and substituted

“Restored name

496. Where a company has been struck off the register and has thereafter been restored to the register under section 489, if between the date of its being struck off and the date of its restoration, another company has been granted a name that is likely to be confused with the name of the restored company, the Registrar may require as a condition of its restoration that the restored company does not carry on business or, if it seeks to carry on business, that it changes its name immediately after it is restored.”.

178. Section 498 of the Act is amended—

Section 498 amended

(a) in subsection (1), by deleting the words “, *ex parte* or upon such notice as the Court may require,”;

(b) in subsection (4)—

(i) by deleting the words “*ex parte*”; and

(ii) by deleting the word “shall” and substituting the words “may, if the Court so directs”;

(c) in subsection (5), by deleting the words “an *ex parte* proceeding” and substituting the words “any proceeding under this Division”.

Section 499 amended **179.** Section 499(1)(b) of the Act is amended by deleting the word “Registrar” and substituting the word “Commission”.

Section 507 amended **180.** Section 507 of the Act is amended—  
(a) in subsection (1), by deleting paragraph (g);  
and  
(b) in subsection (2), by inserting after the word “resolution”, the words “of Parliament”.

Section 510 amended **181.** Section 510 of the Act is amended by repealing subsection (3) and substituting the following subsection:

“ (3) When an offence under subsection (1) is committed by a body corporate or a firm and a director or officer of that body corporate or a partner of that firm knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer or partner is also guilty of the offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for a term of six months.”.

Section 511 amended **182.** Section 511 of the Act is amended by repealing subsection (2) and substituting the following subsection:

“ (2) Where the person who is guilty of an offence under subsection (1) is a body corporate or a firm, then, whether the body corporate or firm has been prosecuted or convicted, any

director or officer of the body corporate or partner of the firm who knowingly authorised, permitted or acquiesced in the act or omission that constituted the offence is also guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for a term of six months.”.

**183.** Section 516 of the Act is amended by inserting Section 516 amended after the word “company” in the first place where it occurs, the words “, including an external company,”.

**184.** The Act is amended by inserting after section Section 517A inserted 517, the following section:

“Criminal  
proceedings  
against firms

517A. (1) Proceedings for an offence alleged to have been committed under any of sections 509 to 511 by a firm shall be brought in the name of that body and not in that of any of its members.

(2) A fine imposed on a firm on a conviction of such an offence shall be paid by the members of the firm jointly and severally but in the first instance out of the funds of the firm.

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(3) Where a firm is charged with any such offence the Criminal Procedure (Corporation) Act, shall have effect as if such firm was a corporation referred to in that Act and section 13 of that Act will take effect so that the prosecutor may enter as a judgment the amount of the fine and costs, if any, in the Court against each of the partners of the firm and such judgment shall be enforceable accordingly in the Court in civil proceedings as though each of such partners was the accused.”.

Section 518 amended **185.** Section 518 of the Act is amended by repealing subsection (2) and substituting the following subsections:

“ (2) Notwithstanding subsection (1), the provisions of the former Act continue to apply to a former-Act company until such time as a certificate of registration or continuance is issued to it under section 319 or 343.

(3) Notwithstanding subsection (2) and the definition of “company” in section 4, upon the commencement date—

(a) sections 21, 24, 300 and 435 shall apply to a former-Act company provided that a receiver or liquidator shall not be liable for the payment of any preferential debts to the extent that the relevant assets of such company have already been distributed at the commencement date; and

(b) Division 10 of Part III and Division 4 of Part IV shall apply to a former-Act company which is a public company as determined under the former Act.

(4) Notwithstanding subsection (3)(a), sections 300 and 435 shall not apply to the winding up or receivership of a former-Act company if the winding up or receivership commenced before the commencement date.”

Section 519 amended **186.** Section 519(2) of the Act is amended—

(a) by deleting the word “is” in the first place where it occurs and substituting the word “shall”; and

(b) by deleting the words “to be” in the first place where they occur and substituting the words “, also be”.

**187.** Section 520 of the Act is amended—

Section 520 amended

## (a) in subsection (1)—

- (i) by deleting the word “refers” and substituting the words “shall also refer”; and
- (ii) by deleting the words “respect or” and substituting the words “respect of”;

## (b) in subsection (2)—

- (i) by deleting the word “refer” and substituting the words “shall also refer”; and
- (ii) by inserting after the word “incorporation”, the words “or continuance”; and

## (c) in subsection (3), by inserting after the word “it”, the word “also”.

**188.** Section 521 of the Act is repealed.

Section 521 repealed

Passed in the Senate this 11th day of March, 1997.

N. COX

*Clerk of the Senate*

Passed in the House of Representatives this 21st day of March, 1997.

J. SAMPSON

*Clerk of the House*

House of Representatives amendments agreed to by the Senate this 25th day of March, 1997.

N. COX

*Clerk of the Senate*