

Revision Date: 31 Dec 2009



ST CHRISTOPHER AND NEVIS

NEVIS ORDINANCES

CHAPTER 7.01 (N)

NEVIS BUSINESS CORPORATION ORDINANCE

and subsidiary legislation

Revised Edition

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws:

Nevis Business Corporation Ordinance

Ordinance 3 of 1984 in force

Amended by Ordinance 1/1985

Ordinance 6/1985

Ordinance 2/1989

Ordinance 5/1994

Ordinance 3/1995

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[substituted by ordinance 2/1994]

“Treasury shares” means shares which have been issued, have been subsequently acquired, and are retained without being cancelled by the corporation.

3. Application of the Ordinance.

(1) Any corporation or company created prior to the effective date of this Ordinance may at any time subject itself to the provisions of this Ordinance by amending its articles of incorporation in accordance with the manner prescribed by Part IX.

(2) Any corporation formed or subject to this Ordinance which does business in Nevis shall be subject to and comply with all requirements of the Companies Act (Cap. 21.03) in the same manner as a company formed thereunder.

(3) A corporation to which the Banking Law or Insurance Law is applicable shall also be subject to this Ordinance, but the Banking Law or Insurance Law, as the case may be, shall prevail over any conflicting provisions of this Ordinance.

4. Form of instruments; filing.

(1) Whenever any provision of this Ordinance requires any instrument to be filed with the Registrar of Companies, such instrument shall comply with the provisions of this Part unless otherwise expressly provided by a law.

(2) Every instrument referenced herein, filed or required to be filed, shall be in the English language, except that the corporate name may be in another language if written in English letters or characters.

(3) All instruments shall be signed by all directors, or, by the president, vice president or managing director, and by the secretary or an assistant secretary.

(4) Whenever any provision of this Ordinance requires an instrument to be acknowledged, such requirement means in the case of execution of an instrument within Nevis, that

- (a) the person signing the instrument shall acknowledge that it is his act and deed or that it is the act and deed of the corporation, as the case may be; and
- (b) the instrument shall be acknowledged before a notary public, commissioner for oaths or other person authorized to take acknowledgments, who shall attest that he knows the person making the acknowledgment to be the person who executed the instrument.

(5) In the case of the execution of an instrument outside of Nevis, an acknowledgment shall mean

- (a) the person signing the instrument shall acknowledge that it is his or her act and deed or that it is the act and deed of the corporation, as the case may be;
- (b) the instrument shall be acknowledged before a notary public or any other person authorized to take acknowledgments according to the

laws of the place of execution, or a consul or vice-consul of St. Kitts and Nevis or other governmental official of St. Kitts or Nevis authorized to take acknowledgments or, in their absence, a consular official of another government having diplomatic relations with St. Kitts and Nevis, and such notary, person, consul or vice-consul shall attest that he or she knows the person making the acknowledgment to be the person who executed the instrument; and

- (c) when the acknowledgment shall be taken by a notary public or any other person authorized to take acknowledgments, except a governmental official of St. Kitts or Nevis or foreign consular official, the signature of such person who has authority shall be attested to by a consul or vice-consul of the Nation of St. Kitts and Nevis or, in his or her absence, by a consular official of another government having diplomatic relations with St. Kitts and Nevis, or a government official of the place of execution who is authorized to make such attestation, or an Apostille according to the Convention de la Haye de 5 Octobre 1961.

[Amended by Ordinance 6/1985]

(6) Whenever any provision of this Ordinance requires any instrument to be filed with the Registrar of Companies, such requirement means that

- (a) an appropriate receipt evidencing payment of all appropriate fees shall be delivered to the office of the Registrar of Companies and, within ten days of the date of the receipt, the original instrument together with a duplicate instrument, both signed and acknowledged;

[Amended by ordinance 6/1985]

- (b) upon delivery of the original signed and acknowledged instrument with the required receipt and an exact signed and acknowledged copy, the Registrar of Companies shall certify that the instrument has been filed in his office by endorsing the word "Filed" and the date of the required receipt upon the original instrument, and the date shall be the filing date;
- (c) the Registrar of Companies shall compare the duplicate signed and acknowledged copy with the original signed and acknowledged instrument, and if he finds that the text is identical, shall affix on the duplicate copy the same endorsement of filing as he affixed on the original. The said original, as endorsed, shall be returned to the corporation. The endorsement constitutes the certificate of the Registrar of Companies that the document is a true copy of the instrument filed in his office and that it was filed as of the date stated in the endorsement;
- (d) any instrument filed in accordance with subsection (b) shall be effective as of the filing date stated thereon; and
- (e) upon the filing of any instrument the Registrar of Companies shall issue a certificate of endorsement under his hand and seal certifying that the instrument is filed.

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[Inserted by Ordinance 5/1994]

(7) Any instrument relating to a domestic or foreign corporation and filed with the Registrar of Companies under this Ordinance may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with the Registrar of Companies a certificate of correction, executed and acknowledged in the manner required for the original instrument.

(8) The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form.

(9) The corrected instrument when filed shall be effective as of the date the original instrument was filed.

5. Certificates or certified copies as evidence.

All certificates issued by the Registrar of Companies in accordance with the provisions of this Ordinance and all copies of documents filed in his office in accordance with the provisions of this Ordinance shall, when certified by him, be taken and received in all courts, public offices and official bodies as *prima facie* evidence of the facts therein stated and of the execution of such instruments.

6. Fees on filing articles of incorporation and other documents.

(1) The Minister of Finance is hereby empowered to promulgate and shall so promulgate a schedule of fees for the filing and issuance of documents under this Ordinance.

(2) Fees payable in respect of this Ordinance shall be payable in Eastern Caribbean dollars, or, upon the authorization of the Minister of Finance, in a currency other than that of the Nation of St. Kitts and Nevis.

(3) On filing with the Registrar of Companies an amendment of articles of incorporation increasing the authorized number of shares or articles of merger or consolidation of two or more domestic corporations, a fee shall be paid computed in accordance with the schedule promulgated pursuant to subsection (1) on the basis of the number of shares provided for in the articles of amendment or articles of merger or consolidation, except that all fees paid by the corporation with respect to the shares authorized prior to such amendment or merger or consolidation shall be deducted from the amount to be paid.

(4) On filing with the Registrar of Companies an amendment of articles of incorporation other than an amendment increasing the authorized number of shares, or articles of dissolution, or articles of merger or consolidation into a foreign corporation or any other document for which a certificate is issued under this Ordinance, a fee shall be paid in accordance with the schedule promulgated pursuant to subsection (1).

(5) Fees for certifying copies of documents and for filing, recording or indexing papers shall be fixed by the Minister of Finance.

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- (c) to have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner;
- (d) to purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
[Amended by Ordinance 6/1985]
- (e) to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its real or personal property, or any interest therein;
- (f) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, and pledge, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities;
- (g) to make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated, in any currency;
- (h) to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested, in any currency;
- (i) to do business, carry on its operations, and have offices and exercise the powers granted by this Part in any jurisdiction within or without Nevis;
- (j) to elect or appoint officers, managing directors, employees and other agents of the corporation, define their duties, fix their compensation, and the compensation of directors, and to indemnify corporate personnel;
- (k) to adopt, amend or repeal bylaws relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers;
- (l) to make donations for the public welfare or for charitable, educational, scientific, civic or similar purposes;
- (m) to pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers, and employees;
- (n) to purchase, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares;

- (o) to be a promoter, incorporator, partner, member, associate, or manager of any partnership, corporation, joint venture, trust or other enterprise.
- (p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.
- (q) to be recognized and to be domiciled or domesticated within or without Nevis, and to change the situs of said domicile or domestication from time to time.
- (r) to protect the assets of the corporation for the benefit of the corporation, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company;

[Inserted by Ordinance 2/1994]

Provided that any business conducted within Nevis is restricted to the activities specified in sub-section (2) of section 123 of this Ordinance.

[Proviso inserted by Ordinance 5/1994]

13. Guarantee authorized by shareholders.

(1) A guarantee may be given by a corporation not in furtherance of its corporate purposes, when authorized at a meeting of shareholders by vote of the holders of a majority of all outstanding shares entitled to vote thereon.

(2) If authorized by a like vote, such guarantee may be secured by a mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated.

14. Defense of *ultra cires*

(1) No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted as provided in subsections (2), (3) and (4).

(2) Lack of capacity or power may be asserted in an action by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation, and if the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract: provided that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(3) Lack of capacity or power may be asserted in an action by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or

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through shareholders in a derivative suit against the incumbent or former officers or directors of the corporation for loss or damage due to their unauthorized act.

(4) Lack of capacity or power may be asserted in a proceeding by the High Court to dissolve the corporation, or to enjoin it from the doing of unauthorized business.

15. Effect of incorporation: corporation as proper party to action.

(1) A corporation shall be a legal entity considered in law a fictional person with separate rights and liabilities, distinct from its shareholders or members.

(2) The corporation shall be a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation; and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Nevis or elsewhere to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation.

16. Liability of directors, officers and shareholders.

Unless otherwise provided by law, the directors, officers, employees and shareholders of a corporation shall not be liable for corporate debts and obligations.

PART III — SERVICE OF PROCESS, REGISTERED AGENT

17. Registered agent for service of process.

(1) A corporation subject to this Ordinance shall at all times have a registered agent in St. Christopher and Nevis.

(2) A corporation which fails to maintain a registered agent in St. Christopher and Nevis shall be in contravention of this Ordinance.

[Substituted by Ordinance 2/1994]

(3) Service of process on a registered agent may be made by registered mail addressed to the registered agent or in any other manner provided by law for the service of summons as if the registered agent were a defendant.

(4) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Registrar of Companies, who shall cause a copy thereof to be sent by registered mail to the corporation at the address of the office of the corporation or, if none, at the last known address of a person at whose request the corporation was formed.

(5) No designation of a new registered agent shall be accepted for filing unless all charges owing to the former agent shall have been paid.

(6) A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Registrar of Companies.

(7) The designation of a registered agent shall terminate upon the expiration of thirty days written notice of resignation directed to the corporation and the filing of a copy

of said notice of resignation with the Registrar of Companies, or sooner if a successor agent is designated.

(8) A registered agent, when served with process, notice or demand for the corporation which he or she represents, shall transmit the same to the corporation by personal notification or in the following manner, that is to say, upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the corporation named therein at its last known address.

(9) The mailing referred to subsection (8) shall be by registered mail.

(10) As soon thereafter as possible if process was issued in Nevis, the registered agent may file with the clerk of the court issuing the process either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent, or if the agent is a corporation, by an officer of the same, properly notarized.

(11) Compliance with the provisions of this section shall relieve the registered agent from any further obligation to the corporation for service of the process, notice or demand, but the agent's failure to comply with the provisions of this section shall in no way affect the validity of the service of the process, notice or demand.

(12) Only a barrister or solicitor admitted to practice in St. Christopher and Nevis or a corporation having a paid-in capital of at least \$500,000.00 may act as a registered agent.

[Inserted by Ordinance 2/1994]

(13) No barrister or solicitor or corporation shall act as registered agent unless first licensed by the Minister.

(14) The original application for licensing shall be in the prescribed form and accompanied by the prescribed fee and there shall be an annual fee payable in January of each year.

[Inserted by Ordinance 2/1994]

(15) The Minister shall prescribe fees for the licensing of registered agents under this Ordinance.

[Inserted by Ordinance 2/1994]

18. Minister of Finance or his appointee as agent for service of process.

(1) Whenever a corporation subject to this Ordinance fails to maintain an authorized agent in Nevis, or whenever said registered agent cannot with reasonable diligence be found at his business address, then the Registrar of companies or his or her appointee shall be an agent of such corporation upon whom any process or notice or demand required or permitted by law to be served may be served.

(2) Service on the Registrar of Companies or his or her appointee as agent of a corporation shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Registrar of companies to receive such service, at the office of the Minister of Finance, duplicate copies of such process together with the statutory fee.

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(3) The Registrar of Companies or his or her appointee shall promptly send one of such copies by registered mail, return receipt requested, to such corporation at the business address of its registered agent, or if there is no such office, then the Registrar of Companies or his or new appointee shall mail such copy in care of any director named in the articles of incorporation at his address stated therein or at the address of the corporation without Nevis, or if none, at the last known address of a person at whose request the corporation was formed or in any other manner permitted by Law.

[Amended by Ordinance 2/1994]

19. Records and certificates of Minister of Finance.

(1) The Registrar of Companies shall keep a record of each process served upon the Registrar of Companies or his or her appointee under this Part, including the date of service. (2) It shall, upon request made within five years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service, and the receipt of the statutory fee.

[Amended by Ordinance 2/1994]

20. Limitation on effect of Part.

Nothing contained in this Part shall affect the validity of service of process on a corporation effected in any other manner permitted by law.

PART IV — FORMATION OF CORPORATIONS, CORPORATE NAMES

21. Incorporators.

Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organize a corporation under this Ordinance.

22. Corporate name.

(1) Except as otherwise provided in subsection (2) of this section, the name of a corporation:

- (a) shall contain the word “corporation”, “incorporated”, “company”, or “limited” or other words or an abbreviation of one of such or other words as will clearly indicate that it is a corporation as distinguished from a natural person or partnership; and
- (b) shall not be the same as the name of a corporation of any type or kind, as such name appears on the index of names of existing corporations or companies or on the reserved name list maintained by the Registrar of Companies or a name so similar to any such name as to tend to confuse or deceive.

(2) The provisions of subsection (1) of this section shall not

- (a) require any corporation, existing or authorized to do business on the effective date of this ordinance, to add to, modify or otherwise change its corporate name; and

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(6) The reservation shall terminate upon the expiration of one hundred twenty days next following the date of reservation unless sooner renewed.

(7) Upon payment of the required fees, the reservation shall be renewed with the Registrar of Companies for no more than two like periods.

(8) An appropriate receipt for the required fees shall be taken along with the Certificate of Name Reservation to be proof of the extension of the reservation.

(9) The Certificate of Name Reservation and any renewals thereof shall be evidenced to the Registrar of Companies at the time the name reserved is utilized by the person, natural or corporate, in whose name the Certificate of Name Reservation has been issued.

25. Contents of articles of incorporation.

(1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) a statement that the corporation is formed under this Ordinance;
- (c) the succession of the corporation if other than perpetual;
[Amended by Ordinance 6/1985]
- (d) the purpose or purposes for which the corporation is organized, and it shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this Ordinance, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;
- (e) the address of the corporation in Nevis which shall be the address of its registered agent;
- (f) the aggregate number of shares which the corporation shall have authority to issue, and if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value, or if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;
- (g) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (h) the number of shares to be issued as registered shares and as bearer shares and whether registered shares may be exchanged for bearer shares and bearer shares for registered shares;
- (i) if bearer shares are authorized to be issued,
 - (i) appropriate procedural provisions respecting the rights and obligations of bearer shareholders including those relating to (1)

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28. Effect of filing articles of incorporation and inspection of register.

(1) The corporate existence shall, upon filing the articles of incorporation, be effective as of the filing date stated thereon.

(2) The endorsement by the Registrar of Companies, as required by section 4 of Part I, shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Ordinance.

(3) A person who has paid the prescribed fee is entitled during normal business hours, to examine and to make copies of or extracts from all documents filed with the Registrar.

(4) The Registrar shall upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar under this Ordinance.

(5) If the records maintained by the Registrar are prepared and maintained in other than a written form, then upon payment of the prescribed fee, the Registrar shall furnish any copy required to be furnished under this Ordinance in an intelligible written form.

(6) A report from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

[Subsections (3), (4), (5) & (6) inserted by Ordinance 3/2009 as section 28A]

29. Organization meeting.

(1) Within a reasonable time after the filing of the articles of incorporation, an organization meeting shall be held either within or without Nevis.

(2) The organization meeting shall be held, in person or by proxy, by the initial directors named in the articles of incorporation or by the incorporator or incorporators or their transferees pursuant to subsection (4) hereof.

(3) The purpose of the meeting shall be to adopt bylaws, transact such business as may come before the meeting, do such acts to perfect the organization of the corporation as are deemed appropriate and, if the initial directors are not named in the articles of incorporation, elect directors to serve or hold office until the first annual meeting of shareholders or until their successors are elected and qualify.

(4) If the articles of incorporation state that the incorporators have subscribed for stock, such subscriptions may be transferred prior to the organization meeting of directors and such transferees may hold the organization meeting of incorporators.

(5) Any action permitted to be taken at the organization meeting may be taken without a meeting if each incorporator, transferee or director signs an instrument setting forth the action so taken.

30. Bylaws.

(1) Every corporation formed under this Ordinance shall have bylaws.

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optional or other rights, if any, or the qualifications, limitations, or restrictions thereof, if any, have not been set forth in the articles of incorporation, but are provided for in a resolution adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation, a statement setting forth a copy of such resolution and the number of shares of the class or series to be issued shall be executed, acknowledged, and filed in accordance with section 4 of Part I of this Ordinance.

(6) Upon the filing of such statement, the resolution establishing and designating the class or series and fixing the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

32. Restrictions on transfer of shares.

(1) A restriction on the transfer of shares of a corporation may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of shareholders or among such shareholders and the corporation. No restriction so imposed shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of such shares are parties to an agreement or voted in favour of the restriction. Any restriction which absolutely prohibits the transfer of shares shall be null and void.

(2) Restrictions on the transfer of shares include those which

- (a) obligate the holder of the restricted shares to offer to the corporation or to any other holders of securities of the corporation or to any person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares; or
- (b) obligate the corporation or any holder of shares of the corporation or any other person or any combination of the foregoing, to purchase at a specified price the shares which are the subject of an agreement respecting the purchase and sale of the restricted securities.

(3) Any transfer restriction adopted under this section shall be noted on the face or the back of the stock certificate.

(4) Any person becoming entitled by operation of law or otherwise to a share or shares in consequence of the death, insanity or bankruptcy of any shareholder of a corporation incorporated under this Ordinance may be registered as a shareholder upon such evidence being produced as may reasonably be required by the directors.

(5) An application by any such person to be registered as a shareholder shall for all purposes be deemed a transfer of shares of the deceased, insane or bankrupt shareholder and the directors shall treat it as such.

[Subsections (4)§(5) inserted by Ordinance 2/1994]

33. Subscription for shares.

(1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months from its date unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

(3) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors.

(4) Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the class or as to all shares of the same series, as the case may be.

(5) In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

(6) The bylaws may prescribe a penalty for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefor.

(7) If mailed, such written demand shall be deemed to be made when sent by registered mail addressed to the subscriber at his last post office address known to the corporation.

(8) In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his or her legal representative.

(9) If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus.

(10) Subscriptions for shares of stock are transferable unless otherwise provided in a subscription agreement.

34. Consideration for shares.

(1) Consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof.

(2) In the absence of fraud in the transaction, the judgment of the board of directors or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

[Amended by Ordinance 2/1994]

(3) Shares with par value may be issued for such consideration, not less than the par value thereof, as is fixed from time to time by the board.

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(4) Shares without par value may be issued for such consideration as is fixed from time to time by the board unless the articles of incorporation reserve to the shareholders the right to fix the consideration, and if such right is reserved as to any shares, a vote of the shareholders shall either fix the consideration to be received for the shares or authorize the board to fix such consideration.

(5) Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

(6) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

35. Payment for shares.

(1) Neither obligations of the subscriber for future payments nor future service shall constitute payment or part payment for shares of a corporation.

(2) Certificates for shares may not be issued until the full amount of consideration therefor has been paid.

(3) When the consideration for shares has been paid in full, the subscriber shall be entitled to all rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be deemed fully paid and non-assessable.

36. Compensation for formation, reorganization and financing.

The reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

37. Determination of stated capital.

(1) Upon issue by a corporation of shares with a par value not in excess of the authorized shares, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus.

(2) Upon issue by a corporation of shares without par value not in excess of the authorized shares, the entire consideration received therefor shall constitute stated capital unless the board within a period of sixty days after issue allocates to surplus a portion, but not all, of the consideration received for such shares.

(3) No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation upon involuntary liquidation except all or part of the amount, if any, of such consideration in excess of such preference, nor shall such allocation be made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the articles of incorporation unless such allocation is authorized by vote of the shareholders.

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- (e) if the share does not entitle the holder to vote, that it is nonvoting, or if the right to vote exists only under certain circumstances, that the right to vote is limited.

39. Dividends in cash, stock or other property.

(1) A corporation may declare and pay dividends in cash, stock or other property on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent or when the declaration or payment would be contrary to any restrictions contained in the articles of incorporation.

(2) Dividends may be declared and paid out of surplus only, but in case there is no surplus, dividends may be declared or paid out of the net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year.

(3) A corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets, may declare and pay dividends regardless of any surplus from the net profits derived from the liquidation or exploitation of such assets without making any deduction for the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets if the net assets remaining after such dividends are sufficient to cover the liquidation preferences of shares having such preferences in involuntary liquidation.

40. Share dividends.

(1) A corporation may make *pro rata* distribution of its authorized but unissued shares to holders of any class or series of its outstanding shares subject to the following conditions:

- (a) if a distribution of shares having a par value is made, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate par value of such shares; and
- (b) if a distribution of shares without par value is made, the amount of stated capital to be represented by each such share shall be fixed by the board, unless the articles of incorporation reserved to the shareholders the right to fix the consideration for the issue of such shares;

and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated capital represented by such shares.

(2) Unrealized appreciation of assets, if any, shall not be included in the computation of surplus available for a share dividend.

(3) Upon the payment of a dividend payable in shares, notice shall be given to the shareholders of the amount per share transferred from surplus.

(4) No dividend payable in shares of any class shall be paid unless the share dividend is specifically authorized by the vote of two-thirds of the shares of each class that might be adversely affected by such a share dividend.

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(5) When reacquired shares other than converted shares are cancelled, the stated capital of the corporation shall be reduced by the amount of stated capital then represented by the shares so cancelled.

(6) The amount by which stated capital has been reduced by cancellation of reacquired shares during a stated period of time shall be disclosed in the next financial statement covering such period that is furnished by the corporation to all its shareholders, or if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of the period and the next such financial statement, and in any event to all its shareholders within six months of the date of the reduction of capital.

(7) Shares cancelled under this section shall be restored to the status of authorized but unissued shares, except that if the articles of incorporation prohibit the reissue of any shares required or permitted to be cancelled under this section, the board shall approve and deliver to the Registrar of Companies articles of amendment under Part IX eliminating such shares from the number of authorized shares.

43. Reduction of stated capital by action of the board.

(1) Except as otherwise provided in the articles of incorporation, the board may at any time reduce the stated capital of a corporation by

- (a) eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares;
- (b) eliminating any amount of stated capital represented by issued shares having a par value to the extent that the stated capital exceeds the aggregate par value of such shares; or
- (c) reducing the amount of stated capital represented by issued shares without par value.

(2) If, however, the consideration for the issue of shares without par value was fixed by the shareholders under this Part, the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

(3) No reduction of stated capital shall be made under this section unless after such reduction the stated capital exceeds the aggregate preferential amounts payable upon involuntary liquidation upon all issued shares having preferential rights in the assets plus the par value of all other issued shares with par value.

(4) When a reduction of stated capital has been effected under this section, the amount of such reduction shall be disclosed in the next financial statement covering the period in which such reduction is made that is furnished by the corporation to all its shareholders, or, if practicable, in the first notice of dividend or share distribution that is furnished to the holder of each class or series of its shares between the date of such reduction and the next such financial statement, and in any event to all its shareholders within six months of the date of such reduction.

PART VI — DIRECTORS AND MANAGEMENT

44. Management of business of corporation.

(1) Subject to limitations of the articles of incorporation and of this Ordinance as to action which shall be authorized or approved by the shareholders, all corporate powers shall be exercised by or under authority of, and the business and affairs of every corporation shall be managed by, a board of directors.

[Amended by Ordinances 6/1985 & 2/1994]

(2) The directors may cause the corporation to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity, and with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having direct or indirect interest in the corporation, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

(3) The rights or interests of any existing or subsequent creditor of the corporation in any assets of the corporation are not affected by any transfer under sub-section (2), and those rights or interests may be pleaded against any transferee in any such transfer.

[Subsections (2) and (3) Inserted by Ordinance 2/1994]

45. Qualification of directors.

(1) The articles of incorporation may prescribe special qualifications for directors, and unless otherwise provided in the articles of incorporation, directors may be natural persons, or corporations, of any nationality and need not be residents of Nevis or shareholders of the corporation.

(2) Alternate or substitute directors may be appointed provided that the terms and conditions under which such appointments shall be made are set forth in the articles of incorporation or bylaws.

46. Number of directors.

(1) The number of directors constituting the entire board shall not be less than three, except that where all the shares of a corporation are held by fewer than three shareholders, the number of directors may be fewer than three but not fewer than the number of shareholders.

(2) Subject to such limitations, such number may be fixed by the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw.

(3) If not otherwise fixed under this section, the number shall be three.

(4) The number of directors may be increased or decreased by amendment of the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw, subject to the following limitations:

- (a) if the board is authorized by the bylaws to change the number of directors, whether by amending the by-laws or by taking action under the specific provisions of a bylaw, such amendment or action shall require the vote of a majority of the entire board; and

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- (b) no decrease shall shorten the term of any incumbent director.

[Amended by Ordinance 6/1985]

47. Election and term of directors.

(1) At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting except as otherwise provided in this Ordinance or in the articles of incorporation.

(2) The articles of incorporation may provide for the election of one or more directors by the holders of the shares of any class or series.

(3) Each director shall hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified.

48. Classification of directors.

(1) The articles of incorporation or the specific provisions of a bylaw adopted by the shareholders may provide that the directors be divided into either two, three or four classes.

(2) All classes shall be as nearly equal in number as possible, and no class shall include fewer than three directors.

(3) The terms of office of the directors initially classified shall be as follows:

- (a) that of the first class shall expire at the next annual meeting of shareholders;
- (b) the second class at the second succeeding annual meeting;
- (c) the third class, if any, at the third succeeding annual meeting; and
- (d) the fourth class, if any, at the fourth succeeding annual meeting.

(4) At each annual meeting after such initial classification, directors to replace those whose terms expire at such annual meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, the third succeeding annual meeting if there are three classes, or the fourth succeeding annual meeting if there are four classes.

(5) If directors are classified and the number of directors is thereafter changed:

- (a) any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible; and
- (b) when the number of directors is increased by the board and any newly created directorships are filled by the board, there shall be no classification of the additional directors until the next annual meeting of shareholders.

49. Newly created directorships and vacancies.

(1) Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by vote of a majority of the directors then in office,

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(2) The vote of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the board unless the articles of incorporation require the vote of a greater number.

(3) A proxy shall be given in an instrument in writing including a telegram, cable, telex or similar tele-transmission.

(4) Unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the board or committee.

(5) Unless restricted by the articles of incorporation or bylaws, members of the board or any committee thereof may participate in a meeting of such board or committee by means of conference telephone, video, or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

(6) The articles of incorporation may contain provisions specifying either or both of the following:

- (a) that the proportion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by subsection (1) in the absence of such provision but less than the total number of directors; and
- (b) that the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by subsection (2) in the absence of such provision but less than the total number of directors.

(7) An amendment of the articles of incorporation which adds a provision permitted by subsection (6) or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the articles of incorporation for adding, changing, or striking out a provision permitted by subsection (6).

52. Meetings of the board.

(1) Meetings of the board, regular or special, may be held at any place within or without Nevis, unless otherwise provided by the articles of incorporation or by the bylaws. The time and place for holding meetings of the board may be fixed by or under the bylaws, or if not so fixed, by the board.

(2) Unless otherwise provided by the bylaws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the bylaws or the board, and special meetings of the board may be called in the manner provided in the bylaws and shall be held upon notice to the directors.

(3) The bylaws may prescribe what shall constitute notice of meeting of the board.

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- (b) if the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which approves such contract or transaction.

(3) The articles of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors and may provide that contracts or transactions in violation of such restrictions shall be void or voidable by the corporation.

(4) Unless otherwise provided in the articles of incorporation or the bylaws, the board shall have authority to fix the compensation of directors for service in any capacity.

55. Loans to directors.

(1) A loan shall not be made by a corporation to any director unless it is authorized by vote of the shareholders. For this purpose, the shares of the director to whom the loan is to be made shall not be shares entitled to vote.

(2) A loan made in violation of this section shall be a violation of the duty to the corporation of the directors approving it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

56. Indemnification of directors and officers.

(1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(3) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the

request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or the enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(4) To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1), (2) or (3), or in the defense of a claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(5) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this action.

(6) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer against any liability asserted against him and incurred by him in such capacity whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

57. Standard of care to be observed by directors and officers.

(1) Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.

(2) In discharging their duties, directors and officers, when acting in good faith, may rely upon financial statements of the corporation represented to them to be correct by the president, managing director or the officer of the corporation having charge of its books or accounts, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation.

[Amended by Ordinance 6/1985]

58. Officers.

(1) Every corporation shall have a president and treasurer, or a managing director, and, a secretary, who shall each be appointed by the board or in the manner directed by the articles of incorporation or the bylaws.

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(2) Such other officers shall be appointed as are required by the articles or the bylaws or as the board may determine are desirable or necessary to carry on the business of the corporation. All officers shall be natural persons except the secretary which may be a corporation.

(3) The articles of incorporation may provide that all officers or that specified officers shall be elected by the shareholders instead of by the board.

(4) Unless otherwise provided in the articles of incorporation or bylaws, all officers shall be elected or appointed to hold office until the meeting of the board following the next annual meeting of shareholders, or in the case of officers elected by the shareholders, until the next annual meeting of the shareholders.

(5) Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

(6) Any two or more offices may be held by the same person unless the articles of incorporation or bylaws otherwise provide.

(7) The board may require any officer to give security for the faithful performance of his duties.

(8) All officers as between themselves and the corporation shall have such authority and perform such duties with respect to the management of the corporation as may be provided in the bylaws or, to the extent not so provided, by the board.

(9) Officers may be of any nationality and need not be residents of Nevis.

59. Removal of officers.

(1) Any officer elected or appointed by the board may be removed by the board with or without cause except as otherwise provided in the articles of incorporation or the bylaws. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(2) The removal of an officer without cause shall be without prejudice to his contract rights, if any, and the election or appointment of an officer shall not of itself create contract rights.

PART VII — SHAREHOLDERS

60. Meetings of shareholders.

(1) Meetings of shareholders may be held at such place, either within or without Nevis, as may be designated in the bylaws.

(2) An annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws, and any other proper business may be transacted at the annual meeting.

(3) A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect

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otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken.

(8) At the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting.

(9) However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder on the new record date entitled to notice under subsection (1) of this section.

62. Waiver of notice.

(1) Notice of a meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting.

(2) The attendance of any shareholder at a meeting, in person or by proxy, without protest, the lack of notice of such meeting prior to the conclusion of the meeting shall constitute a waiver of notice by him.

63. Action by shareholders without a meeting.

(1) Any action required by this Ordinance to be taken at a meeting of shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or documents filed with the Registrar of Companies under this Ordinance.

64. Fixing record date.

(1) For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the bylaws may provide for fixing, or in the absence of such provision, the board may fix, in advance a date as the record date for any such determination of shareholders.

(2) Such date shall not be more than sixty nor less than fifteen days before the date of such meeting, nor more than sixty days prior to any other action.

65. Proxies.

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person to act for him by proxy.

(2) Every proxy must be signed by the shareholder or his attorney-in-fact.

(3) No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy.

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existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

[Amended by Ordinance 6/1985]

66. Quorum of shareholders.

(1) Unless otherwise provided in the articles of incorporation, a majority of shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of fewer than one-third of the shares entitled to vote at a meeting.

(2) When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

(3) The shareholders present may adjourn the meeting despite the absence of a quorum.

67. Vote of shareholders required.

(1) Directors shall, except as otherwise required by this Ordinance or by the articles of incorporation as permitted by this Ordinance, be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election.

(2) The articles of incorporation of any corporation may provide that in all elections of directors of such corporation each shareholder shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

(3) The right referred to in subsection (2), when exercised, shall be termed cumulative voting.

(4) Whenever any corporate action, other than the election of directors, is to be taken under this Ordinance by vote of the shareholders, it shall, except as otherwise required by this Ordinance or by the articles of incorporation as permitted by this Ordinance, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

68. Greater requirement as to quorum and vote of shareholders.

(1) The articles of incorporation may contain a provision specifying either or both of the following:

- (a) that the proportion of shares, or the proportion of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the articles of incorporation, shall be greater than the proportion prescribed by this Ordinance in the absence of such provision; and

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(6) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee.

(7) Unless otherwise provided in, and subject to, a written agreement or the bylaws or articles of incorporation, a bearer shareholder whose shares are pledged shall be entitled to vote such shares until they are delivered to the pledgee, or a nominee of the pledgee.

(8) Shares in the name of another corporation of any type or kind may be voted by such officer, agent or proxy as the bylaws of such other corporation may provide, or, in the absence of such provision, as the board of such other corporation may determine.

(9) The articles of incorporation may provide, except as limited by section 31, either absolutely or conditionally, that the holder of any designated class or series of shares shall not be entitled to vote, or it may otherwise limit or define the respective voting powers of the several classes or series of shares, and, except as otherwise provided in this Ordinance, such provisions of such articles shall prevail, according to their tenor in all elections and in all proceedings, over the provisions of this Ordinance which authorize any action by the shareholders.

[Amended by Ordinance 6/1985]

71. Voting trusts.

(1) Any shareholder, under an agreement in writing, may transfer his shares to a voting trustee for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions stated therein.

(2) The certificates for shares so transferred shall be surrendered and cancelled and new certificates therefor issued to such trustee stating that they are issued under such agreement, and in the entry of such ownership in the record of the corporation that fact shall also be noted, and such trustee may vote the shares so transferred during the term of such agreement.

(3) At the termination of the agreement, the shares surrendered shall be reissued to the owner in accordance with the terms of the trust agreement.

(4) The trustee shall keep available for inspection by holders of voting trust certificates at his office or at a place designated in such agreement or of which the holders of voting trust certificates have been notified in writing, correct and complete books and records of account relating to the trust, and a record containing the names and addresses of all persons who are holders of voting trust certificates and the number and class of shares represented by the certificates held by them and the dates when they became the owners thereof.

(5) The record may be in written form or any other form capable of being converted into written form within a reasonable time.

(6) A duplicate of every such agreement shall be filed in the office of the corporation and it and the record of voting trust certificate holders shall be subject to the same right of inspection by a shareholder of record or a holder of a voting trust certificate, in person or by agent or attorney, as are the records of the corporation under Part VIII of this Ordinance.

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74. Preemptive rights.

(1) Except as otherwise provided in the articles of incorporation or in this section, in the event of:

- (a) the proposed issuance by the corporation of shares, whether or not of the same class as those previously held, which would adversely affect the voting rights or rights to current and liquidating dividends of such holders;
- (b) the proposed issuance by the corporation of securities convertible into or carrying an option to purchase shares referred to in subsection (i) of this subsection; or
- (c) the granting by the corporation of any options or rights to purchase shares or securities referred to in paragraphs (a) or (b) of this subsection,

the holders of shares of any class shall have the right, during a reasonable time and on reasonable terms to be determined by the board, to purchase such shares or other securities, as nearly as practicable, in such proportion as would, if such preemptive right were exercised, preserve the relative rights to current and liquidating dividends and voting rights of such holders and at a price or prices no less favourable than the price at which such shares, securities, options or rights are to be offered to other holders.

(2) The holders of shares entitled to the preemptive right, and the number of shares for which they have a preemptive right, shall be determined by fixing a record date in accordance with section 64 of this Ordinance.

(3) Except as otherwise provided in the articles of incorporation, shareholders shall have no preemptive right to purchase:

- (a) shares or other securities issued to effect a merger or consolidation;
- (b) shares or other securities issued or optioned to directors, officers, or employees of the corporation as an incentive to service or continued service with the corporation pursuant to an authorization given by the shareholders, and by the vote of the holders of the shares entitled to exercise preemptive rights with respect to such shares;
- (c) shares issued to satisfy conversion or option rights previously granted by the corporation;
- (d) treasury shares; or
- (e) shares or securities which are part of the shares or securities of the corporation authorized in the original articles of incorporation and are issued, sold or optioned within two years from the date of filing such articles.

(4) The holders of shares entitled to the preemptive right shall be given prompt notice setting forth the period within which and the terms and conditions upon which such shareholders may exercise their preemptive right.

(5) Such notice shall be given personally or by mail at least fifteen days prior to the expiration of the period during which the right may be exercised.

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PART VIII — CORPORATE RECORDS AND REPORTS

76. Requirement for keeping books of account, minutes and records of shareholders.

(1) Every corporation formed under this Ordinance shall keep correct and complete books and records of account and shall keep minutes of all meetings of shareholders, of actions taken on consent by shareholders, of all meetings of the board of directors, of actions taken on consent by directors and of meetings of the executive committee, if any.

(2) Every corporation formed under this Ordinance shall keep a record containing the names and addresses of all registered shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof.

(3) In addition, any such corporation which issues bearer shares shall maintain a record of all certificates issued in bearer form, including the number, class and dates of issuance of such certificates.

(4) Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

77. Shareholders' right to inspect books and records.

(1) Any shareholder or holder of a voting trust certificate, in person or by attorney or other agent, may, during the usual hours of business, inspect, for a purpose reasonably related to his interests as a shareholder, or as the holder of a voting trust certificate, and make copies or extracts from the share register, books of account, and minutes of all proceedings.

(2) Any inspection authorized by subsection (1) may be denied to a shareholder or other person who within five years sold or offered for sale a list of shareholders of a corporation or aided or abetted any person in procuring for sale any such list of shareholders or who seeks such inspection for a purpose which is not in the interest of a business other than the business of the corporation or who refuses to furnish an affidavit attesting to his right to inspect under this section.

(3) The right of inspection stated by this section may not be limited in the articles or bylaws.

78. Directors' right of inspection.

(1) Every director shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of the corporation, domestic or foreign, of which he is a director, and also of its subsidiary corporations.

(2) Such inspection by a director may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts.

79. Enforcement of right of inspection.

(1) Upon refusal of a lawful demand for inspection of records required to be maintained under this Ordinance, the person making the demand may apply to the High

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83. Procedure for amendment.

(1) Amendment of the articles of incorporation may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent of all shareholders entitled to vote thereon.

(2) Alternatively, any one or more of the following amendments may be approved by the board:

- (a) to specify or change the location of the office or registered address of the corporation; and
- (b) to make revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(3) The articles of incorporation may be amended by consent in writing of all the incorporators provided the incorporators verify that no shares have been issued.

(4) This section shall not alter the vote required under any other section for the adoption of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section.

84. Class voting on amendments.

(1) Notwithstanding any provisions in the articles of incorporation, the holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, and in addition to the authorization of an amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely.

(2) If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this section.

85. Articles of amendment.

(1) The articles of amendment shall be executed for the corporation and acknowledged in accordance with the provisions of section 4, and shall set forth:

- (a) the name of the corporation, and if it has been changed, the name under which it was formed;
- (b) the date its articles of incorporation were filed with the Registrar of Companies;
- (c) each section affected thereby;
- (d) if any such amendment provides for a change or elimination of issued shares and, if the manner in which the same shall be effected is not

set forth in such amendment, then a statement of the manner in which the same shall be effected;

- (e) if any amendment reduces stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced; and
- (f) the manner in which the amendment of the articles of incorporation was authorized.

(2) The articles of amendment shall be filed with the Registrar of Companies in accordance with the provisions of section 4.

86. Effectiveness of amendment.

(1) Upon filing of the articles of amendment with the Registrar of Companies, the amendment shall become effective as of the filing date stated thereon and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which it shall be a party, or the existing rights of persons other than shareholders, and in the event the corporation name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.

87. Right of dissenting shareholders to payment.

A holder of any adversely affected shares who does not vote on or consent in writing to an amendment to the articles of incorporation shall, subject to and by complying with the provisions of section 96, have the right to dissent and to receive payment for such shares, if the articles of amendment

- (a) alter or abolish any preferential right of any outstanding shares having preferences;
- (b) create, alter, or abolish any provision or right in respect of the redemption of any outstanding shares;
- (c) alter or abolish any preemptive right of such holder to acquire shares or other securities; or
- (d) exclude or limit the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class.

88. Restated articles of incorporation.

(1) At any time after its articles of incorporation have been amended, a corporation may, by action of its board, without necessity of vote of the shareholders, cause to be prepared a document entitled "Restated Articles of incorporation", which will integrate into one document its original articles of incorporation (or articles of consolidation) and all amendments thereto, including those effected by articles of merger.

(2) The restated articles of incorporation shall also set forth that this document purports merely to restate but not to change the provisions of the original articles of

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incorporation as amended and that there is no discrepancy between the said provisions and the provisions of the restated articles.

(3) The restated articles of incorporation shall be executed and filed as provided in section 85.

(4) A copy of the restated articles of incorporation filed with the Registrar of Companies in the manner provided in section 4 shall be presumed, until otherwise shown, to be the full and true articles of incorporation as in effect on the date filed.

(5) A corporation may also integrate its articles of incorporation and amendments thereto by the procedure provided in this Part for amending the articles of incorporation.

PART X — MERGER OR CONSOLIDATION

89. Definitions.

Whenever used in this part;

“Merger” means a procedure whereby any two or more corporations merge into a single corporation, which is any one of the constituent corporations;

“Consolidation” means a procedure whereby any two or more corporations consolidate into a new corporation formed by the consolidation;

“Constituent corporation” means an existing corporation that is participating in the merger or consolidation with one or more other corporations;

“Surviving corporation” means the constituent corporation into which one or more other constituent corporations are merged; and

“Consolidated corporation” means the new corporation into which two or more constituent corporations are consolidated.

90. Merger or consolidation of domestic corporations.

(1) Two or more domestic corporations may merge or consolidate as provided in this Part.

(2) The board of each corporation proposing to participate in a merger or consolidation shall approve a plan of merger or consolidation setting forth:

(a) the name of each constituent corporation, and if the name of any of them has been changed, the name under which it was formed, and the name of the surviving corporation, or the name, or the method of determining it, of the consolidated corporation;

(b) as to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote and further specifying each class and series, if any, entitled to vote as a class;

[Amended by Ordinance 6/1985]

- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the shares of each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each constituent corporation, or a combination thereof;
- (d) in case of merger,
 - (i) a statement of any amendment in the articles of incorporation of the surviving corporation to be effected by such merger;
 - (ii) in case of consolidation, all statements required to be included in articles of incorporation for a corporation formed under this Ordinance, except statements as to facts not available at the time the plan of consolidation is approved by the board; and
- (e) such other provisions with respect to the proposed merger or consolidation as the board considers necessary or desirable.

(3) The board of each constituent corporation, upon approving such plan of merger or consolidation, shall submit such plan to a vote of shareholders of each such corporation in accordance with the following:

- (a) notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each shareholder, whether or not entitled to vote;
- (b) the plan of merger or consolidation shall be authorized at a meeting of shareholders by vote of the holders of a majority of outstanding shares entitled to vote thereon, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class entitled to vote thereon as a class and of the total shares entitled to vote thereon; and
- (c) the shareholders of the outstanding shares of a class shall be entitled to vote as a class if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(4) After approval of the plan of merger or consolidation by the board and shareholders of each constituent corporation, the articles of merger or consolidation shall be executed in duplicate by each corporation by its president, vice president or managing director and by its secretary or an assistant secretary, and shall set forth:

- (a) the plan of merger or consolidation, and, in case of consolidation, any statement required to be included in articles of incorporation for a corporation formed under this Ordinance;
- (b) the date the articles of incorporation of each constituent corporation were filed with the Registrar of Companies; and

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- (c) the manner in which the merger or consolidation was authorized with respect to each constituent corporation.

(5) The articles of merger or articles of consolidation shall be filed with the Registrar of Companies in accordance with the provisions of section 4.

91. Merger of subsidiary corporations.

(1) Any domestic corporation owning at least ninety percent of the outstanding shares of each class of another domestic corporation or corporations may merge such other corporation or corporations into itself without the authorization of the shareholders of any such corporation.

(2) Its board shall approve a plan of merger, setting forth:

- (a) the name of each subsidiary corporation to be merged and the name of the surviving corporation, and if the name of any of them has been changed, the name under which it was formed;
- (b) the designation and number of outstanding shares of each class of each subsidiary corporation to be merged and the number of such shares of each class owned by the surviving corporation;
- (c) the terms and conditions of the proposed merger, including the manner and basis of converting the shares of each subsidiary corporation to be merged not owned by the surviving corporation, into shares, bonds or other securities of the surviving corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each such subsidiary corporation or a combination thereof; and
- (d) such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(3) A copy of such plan of merger or an outline of the material features thereof shall be delivered, personally or by mail to all holders of shares of each subsidiary corporation to be merged not owned by the surviving corporation, unless the giving of such copy or outline has been waived by such holders.

(4) The surviving corporation shall deliver duplicate originals of the articles of merger to the Registrar of Companies.

(4) The articles shall set forth

- (a) the plan of merger;
- (b) the date when the articles of incorporation of each constituent corporation were filed with the Registrar of Companies; and
- (c) if the surviving corporation does not own all the shares of each subsidiary corporation to be merged, either the date of the giving to holders of shares of each such subsidiary corporation not owned by the surviving corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy or outline has been waived, if such is the case.

(5) The articles of merger shall be filed with the Registrar of companies in accordance with the provisions of section 4.

92. Effect of merger or consolidation.

(1) The merger or consolidation shall be effective upon the filing of the articles of merger or consolidation with the Registrar of Companies or on such date subsequent thereto, not to exceed thirty days, as shall be set forth in such articles.

[Amended by Ordinance 6/1985]

(2) When such merger or consolidation has been effected,

- (a) such surviving or consolidated corporation shall thereafter consistently with its articles of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations;
- (b) all the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed;
- (c) the surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations;
- (d) no liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger or consolidation;
- (e) no action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation;
- (f) in the case of a merger, the articles of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its articles of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statement set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of a corporation formed under this Ordinance, shall be its articles of incorporation; and
- (g) unless otherwise provided in the articles of merger or consolidation, a constituent corporation which is not the surviving corporation or the consolidated corporation, ceases to exist and is dissolved.

[Amended by Ordinance 6/1985]

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93. Merger or consolidation of domestic and foreign corporations.

(1) One or more foreign corporations may be merged or consolidated with one or more domestic corporations in the following manner, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is established,

- (a) each domestic corporation shall comply with the provisions of this Ordinance with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized;
- (b) if the surviving or consolidated corporation is to be governed by the laws of any jurisdiction, other than Nevis, it shall file with the Registrar of Companies
 - (i) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Ordinance with respect to the rights of dissenting shareholders;
 - (ii) a certificate of merger or consolidation issued by the appropriate official of the foreign jurisdiction.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or consolidated corporation is to be governed by the laws of this jurisdiction.

(3) If the surviving consolidated corporation is to be governed by the laws of any jurisdiction, other than Nevis, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

(4) The effective date of a merger or consolidation in cases where the surviving or consolidated corporation is to be governed by the laws of any jurisdiction, other than Nevis, shall be determined by the filing requirements and laws of such other jurisdiction.

(5) The procedure for the merger of a subsidiary corporation or corporation under section 91 shall be available where either a subsidiary corporation or the corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary is a foreign corporation, and such merger is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated.

94. Sale, lease, exchange or other disposition of assets.

(1) A sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only in accordance with the following procedure:

- (a) the board of directors shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of shareholders;

- (b) notice of meeting shall be given to each shareholder, whether or not, entitled to vote; and
- (c) at such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix or may authorize the board to fix any or all terms and conditions thereof and the consideration to be received by the corporation therefor.

(2) Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(3) The board of directors may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated.

(4) Unless the articles of incorporation provide otherwise, no vote or consent of shareholders shall be required to authorize such action by the board of directors.

95. Right of dissenting shareholder to receive payment for shares.

Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions and receive payment of the fair value of his shares:

- (a) any plan of merger or consolidation to which the corporation is a party; or
- (b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

96. Procedure to enforce shareholder's right to receive payment for shares.

(1) A shareholder intending to enforce his rights under section 87 or section 95 to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is to be submitted to a vote, or at such meeting but before the vote, written objection to the action.

(2) The objection shall include a statement that he intends to demand payment for his shares if the action is taken.

(3) Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this Ordinance or where the proposed action is authorized by written consent of shareholders without a meeting.

(4) Within twenty days after the shareholders' authorization on date, which term as used in this section means the date on which the shareholders' vote authorizing such action

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was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who filed written objection or from whom written objection was not required, excepting any who voted for or consented in writing to the proposed action.

(5) Within twenty days after the giving of notice to him or her any shareholder to whom the corporation was required to give such notice and who elects to dissent shall file with the corporation a written notice of such election, stating his or her name and residence address, the number and classes of shares as to which he or she dissents, and a demand for payment of the fair value of his or her shares.

(6) Any shareholder who elects to dissent from a merger under section 91 shall file a written notice of such election to dissent within twenty days after the giving to him or her of a copy of the plan or merger or an outline of the material features thereof under section 91.

(7) A shareholder may not dissent as to fewer than all the shares that he owns beneficially

(8) A nominee or fiduciary may not dissent on behalf of any beneficial owner as to fewer than all the shares of such owner held of record by such nominee or fiduciary.

(9) Upon filing a notice of election to dissent, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares.

(10) Within seven days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven days after the proposed corporate action is consummated, whichever is later, the corporation or, in the case of a merger or consolidation, the surviving or consolidated corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his or her shares at a specified price which the corporation considers to be their fair value.

(11) If within thirty days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his or her shares, payment therefor shall be made within thirty days after the making of such offer upon the surrender of the certificates representing such shares.

(12) The following procedures shall apply if the corporation fails to make such offer within such period of seven days or if it makes the offer and any dissenting shareholder fails to agree with it within the period of thirty days thereafter upon the price to be paid for shares owned by such shareholder:

- (a) the corporation shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the High Court to determine the rights of dissenting shareholders and to fix the fair value of their shares, and if, in the case of merger or consolidation the surviving or consolidated corporation is a corporation without an office in Nevis, such proceeding shall be brought in the appropriate court where the office of the corporation, whose shares are to be valued, was located;

- (b) if the corporation fails to institute such proceedings within such period of twenty days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period, and if such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the Court, for good cause shown, shall otherwise direct;
- (c) all dissenting shareholders, excepting those who have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action *quasi in rem* against their shares, and the corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder in the manner provided by law for the service of a summons;
- (d) the Court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his or her shares;
- (e) if the corporation does not request the determination referred to in paragraph (d) or if the Court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which for the purpose of this section, shall be the fair value as of the close of business on the day prior to the shareholders authorization date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal;
- (f) the Court may appoint an appraiser to receive evidence and recommend a decision on the question of fair value;
- (g) the final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his or her, shares so determined; and
- (h) within sixty days after the final determination of the proceeding, the corporation shall pay each dissenting shareholder the amount found to be due to him or her upon surrender of the certificates representing his or her shares.

(13) Shares acquired by the corporation upon the payment of the agreed value therefor or of the amount due under the final order, as provided in this section, shall become treasury shares or be cancelled except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

(14) The enforcement by a shareholder of his or her right to receive payment for his or her shares in the manner provided herein shall exclude the enforcement by such shareholder of any right to which he or she might otherwise be entitled by virtue of share ownership, except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is illegal or fraudulent as to such shareholder.

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PART XI — DISSOLUTION

97. Manner of effecting dissolution.

(1) Except as otherwise provided in its articles of incorporation, a corporation may be dissolved if, at a meeting of shareholders, the holders of two-thirds of all outstanding shares entitled to vote on a proposal to dissolve, by resolution consent that the dissolution shall take place.

(2) A certified copy of such resolution shall be filed with the articles of dissolution.

(3) Whenever all the shareholders entitled to vote on a proposal to dissolve shall consent in writing to a dissolution, no meeting of shareholders shall be necessary.

(4) The writing or writings, or a certified copy of same, evidencing the consent shall be filed with the articles of dissolution.

(5) Articles of dissolution shall be signed and delivered to the Registrar of Companies.

(6) They shall set forth the name of the corporation, the date its articles of incorporation were filed with the Registrar of Companies, the name and address of each of its directors and officers, that the corporation elects to dissolve, and the manner in which the dissolution was authorized, and the articles of dissolution shall be filed with the Registrar of Companies in accordance with the provisions of section 4.

(7) The dissolution shall become effective as of the filing date stated on the articles of dissolution.

98. Judicial dissolution.

(1) A shareholders' meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified below, may be called, notwithstanding any provision in the articles of incorporation, by the holders of ten percent of all outstanding shares entitled to vote thereon, or if the articles of incorporation authorize a lesser proportion of shares to call the meeting, by such lesser proportion.

(2) A meeting under this section may not be called more often than once in any period of twelve consecutive months.

(3) Except as otherwise provided in the articles of incorporation, the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors may adopt at the meeting a resolution and institute a special proceeding in Nevis for dissolution on one or more of the following grounds:

- (a) that the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained;
- (b) that the shareholders are so divided that the votes required for the election of directors cannot be obtained;
- (c) that there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders;

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[Amended by Ordinance 3/2009]

99. Dissolution on failure to pay annual fee or appoint agent.

(1) On the failure of a corporation to pay the annual registration fee or maintain a registered agent for a period of one year the Registrar shall remove the corporation from the register.

(2) Where the Registrar has reasonable grounds to believe that a corporation incorporated under this Ordinance is engaged in any criminal activity, the Registrar shall forfeit the articles of incorporation of the corporation and shall remove the corporation from the register.

(3) A corporation which is removed from the register pursuant to subsection (1) may be restored to the register within three years of the date of removal upon payment to the Registrar of the prescribed fee.

(4) A corporation removed from the register pursuant to subsection (2) may be restored to the register at any time if to the satisfaction of the Registrar the grounds for forfeiture of the articles of incorporation have been proven false.

(5) A corporation shall be restored to the register retroactive to the date of its removal.

(6) Every corporation shall pay a fee for restoration to the register.

(7) Notwithstanding subsection (6), the Registrar may, in his or her discretion, restore a corporation to the register at any time upon an application made by the corporation on the prescribed form and upon payment to the Registrar of the prescribed fee.

(8) A corporation making an application under subsection (7) shall also submit to the registrar a statement that there has been no illegal activity perpetrated by the corporation or pending litigation against the corporation that would render the corporation undesirable in any way to be restored to the register.

(9) A corporation which is not restored to the register within three years of the date of removal shall be deemed to have commenced to wind up and dissolve in accordance with this part.

(10) The Registrar shall, before removing any corporation pursuant to subsection (2), give notice in writing to the registered agent of the corporation specifying the allegations of criminal activity of which the corporation is accused and allow the corporation a period of thirty days to respond to the notice.

[Amended by Ordinances 3/1995, 2/1994 & 3/2009]

100. Winding up affairs of corporation after dissolution.

(1) All corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the

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of which the corporation, its directors, officers or shareholders, have any defense or counterclaim.

(5) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the High Court.

(6) Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section, and the claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice, and all claims which are so filed but are disallowed by the High Court, shall be forever barred as against the corporation, its assets, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided.

(7) Notwithstanding this section, tax claims and other claims by the Government shall not be required to be filed under this Ordinance, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

PART XII — TRANSFER OF DOMICILE TO NEVIS

102. Definitions.

As used in this Part, unless the context otherwise requires, the term:

“Articles of Incorporation” when referring to a Foreign Corporation means the articles of incorporation, certificate of incorporation, charter, statute, memorandum or other instrument defining the constitution of the corporation;

“Corporation” includes any incorporated organization, private law corporation, public law corporation, or similar entity;

“Foreign Domicile” means the seat, siege social, registered office, or any other equivalent thereto under applicable law;

[Inserted by Ordinance 6/1985. Definition of “domicile” repealed]

“Foreign Corporation” means any corporation, incorporated, created or formed in any jurisdiction other than Nevis and which derives no income from operations in Nevis.

103. When transfer of domicile is permitted.

(1) Any Foreign Corporation may, subject to and upon compliance with the further provisions of this Part, transfer its domicile into Nevis, and may perform the acts described in the provisions of this Part, so long as the laws of the Foreign Domicile do not expressly prohibit such transfer.

(2) Nothing in this Ordinance shall be regarded as permitting a foreign corporation which transfers its domicile to Nevis to transfer business operations to Nevis.

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equivalent to those of any officer or director, however named or described and who is authorised to sign such Application to Transfer Domicile on behalf of the corporation.

[Amended by Ordinance 2/1989]

108. Transfer of Domicile to Nevis.

(1) Upon the filing of the Application to Transfer Domicile and the Documents referred to in sections 105 and 106, together with the fees prescribed in section 6 of this Ordinance if the Registrar of Companies shall find that such documents are in proper form and satisfy the requirements of this Part, and if the name of the corporation meets the requirements of section 22 of this Ordinance, then the Registrar of Companies shall deliver to the corporation a Certificate of Transfer of Domicile and the corporation shall become domiciled and domesticated in Nevis as a corporation of Nevis and shall thereafter be subject to all the provisions of this Ordinance, and the corporation shall be deemed to have commenced its existence on the date the corporation was first formed, incorporated, created or otherwise came into existence and shall have continued its existence in Nevis, and thereafter.

(2) The corporation shall promptly adapt its bylaws, its registration, management and records to comply with the Nevis Law.

[Amended by Ordinance 2/1989]

109. Prior obligations and liabilities.

The transfer of domicile of any corporation to Nevis shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such transfer.

110. Applicable law.

The filing of an application to transfer domicile shall not affect the choice of law applicable to prior obligations and rights of the corporation, except that from the date the application to transfer domicile is filed, the laws of Nevis, including the provisions of this Ordinance, shall apply to the corporation to the same extent as if the corporation had been originally incorporated as a corporation of Nevis on that date and title to the corporation's assets shall also be governed by Nevis law.

[Amended by Ordinance 2/1989]

111. Departure.

Any corporation formed, incorporated, created, or otherwise existing under or subject to this Ordinance may become domiciled in any foreign jurisdiction upon compliance with this Ordinance and the laws of the jurisdiction into which the corporation seeks to become domiciled.

112. Certificate of Departure.

(1) Any corporation described in section 111 of this ordinance shall submit for filing with the Registrar of Companies a certificate of departure which shall be executed in the same manner as an application to transfer domicile.

(2) The Certificate of Departure shall set forth

- (a) the names and addresses of the corporation's creditors and the total amount of its indebtedness to such creditors, and the names and addresses of all persons or entities which have notified the corporation in writing of a claim in excess of one thousand dollars and the total amount of such claims;
- (b) that the intended departure from Nevis and transfer of domicile to a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the corporation;
- (c) that the corporation at the time of application to the foreign jurisdiction is not in breach of any duty or obligation imposed upon it by this Ordinance or any other law of Nevis; and
- (d) that the transfer of domicile to the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing shareholders or other parties in interest; and
- (e) a consent and agreement by the corporation that it may be served with process in Nevis in any proceeding arising out of actions or omissions occurring prior to its departure from Nevis, which agreement shall include the appointment of the Registrar of Companies as the agent of the corporation to accept such service of process and shall set forth an address to which a copy of such process shall be forwarded by mail.

[Amended by Ordinances 2/1989 and 2/1994]

113. Effective date of departure.

Upon payment of all fees outstanding in Nevis and upon proper compliance with this Ordinance and applicable laws for transfer of domicile to the foreign jurisdiction, the departing corporation shall notify the Registrar of Companies as to the effective date of the transfer of domicile outside of Nevis, and as of the date of such transfer to the foreign jurisdiction, said corporation shall be deemed to have ceased to be a corporation domiciled in Nevis.

114. Jurisdiction of courts after departure.

Nothing in this Part shall obviate, diminish or affect the jurisdiction of any court in Nevis to hear and determine any proceeding commenced therein by or against the corporation arising out of actions or omissions which occurred before the corporation ceased to be domiciled in Nevis.

PART XIII — EMERGENCY TRANSFER OF DOMICILE INTO NEVIS

[Amended by Ordinance 2/1989]

115. Definitions.

(1) As used in this Part, unless the context requires otherwise, the term “emergency condition” shall be deemed to include but not be limited to any of the following:

- (a) war or other armed conflict;

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- (b) revolution or insurrection; invasion or occupation by foreign military forces;
- (c) rioting or civil commotion of an extended nature; domination by a foreign power;
- (d) expropriation, nationalization or confiscation of a material part of the assets or property of the corporation;
- (e) impairment of the institution of private property (including private property held abroad);
- (f) the taking of any action under the laws of Nevis whereby persons resident in the Foreign Domicile might be treated as “enemies” or otherwise restricted under the laws of Nevis relating to trading with enemies of Nevis;
- (g) or the immediate threat of any of the foregoing;
- (h) and such other event which, under the laws of the Foreign Domicile, permits the corporation to transfer its domicile.

(2) Terms used in this Part and not defined herein are used as defined in section 102 of this Ordinance.

116. When emergency transfer of domicile is permitted.

During the existence of an emergency condition in the jurisdiction of its domicile, any Foreign Corporation may, subject to and upon compliance with the further provisions of this Part, apply for emergency transfer of its domicile to Nevis.

[Amended by Ordinance 2/1989]

117. Application for temporary transfer of domicile.

(1) Any Foreign Corporation may apply for emergency transfer of domicile to Nevis by filing with the Registrar of Companies:

- (a) documents and certificates similar in respect to those required by sections 104 and 106 of this Ordinance, except that such documents shall refer to an emergency transfer of domicile pursuant to this Part; and
- (b) a certificate of an authorised officer, director or agent of the corporation specifying the emergency condition which exists in the Foreign Domicile.

(2) The Registrar of Companies, in his or her discretion, may waive any of the above requirements upon request by such corporation supported by facts (including without limitation, the existence of an emergency condition) justifying such waiver.

(3) In addition, if emergency conditions have affected ordinary means of communication any of the documents or certificates hereby required may be submitted by telegram, telex, teletype or other form of writing so long as the duly executed original

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PART XIV – TAX EXEMPTION

122. Exemption.

(1) Any corporation subject to this Ordinance which does no business in Nevis shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Nevis or in connection with other activities outside of Nevis or in connection with matters of corporate administration which may occur in Nevis, except as provided in section 6 and 7 of this Ordinance.

(2) For purposes of this section, no corporation shall be considered to be doing business in Nevis solely because it engages in one or more of the following activities:

- (a) maintaining bank accounts in Nevis;
- (b) holding meetings of directors or shareholders in Nevis;
- (c) maintaining corporate or financial records in Nevis;
- (d) maintaining an administrative or managerial office in Nevis with respect to assets or activities outside of Nevis;
- (e) maintaining a registered agent in Nevis; and
- (f) investing in stocks or entities of Nevis corporations or being a partner in a Nevis partnership or a beneficiary of a Nevis trust or estate;
- (g) acquires real property in a local industrial or tourist facility provided always that such property shall be situated in a project or development approved and authorized by the Nevis Island Administration.

123. Licence required for management office.

(1) Notwithstanding section 122.(2)(d), no corporation shall maintain an administrative or management office in Nevis unless licensed to do so by the Minister of Finance.

(2) An application for a licence shall be in such form as may be prescribed or, until a form is prescribed, in such form as the Minister of Finance may require and shall be accompanied by such particulars and such evidence, documentary or otherwise, as the Minister of Finance requires.

(3) A licence may be issued subject to such conditions or restrictions as the Minister of Finance thinks fit to impose.

(4) A licence may be revoked by the Minister of Finance on the breach of any condition or restriction to which the licence is subject.

(5) Any corporation that maintains an administrative or managerial office in Nevis without a licence shall be subject to a fine of \$50,000 and to be struck off the register.

(6) The provisions of this section shall apply to every corporation that

- (a) maintains an administrative or management office in Nevis immediately before the commencement of this Ordinance; or

- (b) wishes to maintain an administrative or management office in Nevis on or after the commencement of this Ordinance.

(7) A corporation described in subsection (6)(a) may apply for a licence within 30 days after the commencement of this Ordinance and shall not be deemed to be in violation of this Ordinance during such period that the application is being considered by the Minister of Finance.

(8) If an application made by a corporation under subsection (7) is rejected the corporation shall close its offices in Nevis within 10 days after receipt of the notice of rejection.

124. Limitation of section 123.

The provisions of section 123 shall not apply to any corporation that is managed or administered by a company or a person duly licensed by the Minister in accordance with section 17 of this Ordinance or in accordance with any other law enacted by the Nevis Island Legislature.

[Sections 123 & 124 inserted by Ordinance 1/1999 as sections 123A & 123B, respectively]

125. Dividends and distributions.

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

PART XV – MISCELLANEOUS PROVISIONS

126. Savings Provision.

This Ordinance shall not affect any cause of action, liability, penalty, or action or special proceeding which on the effective date of this Ordinance is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted, or defended as if this Ordinance had not been enacted.

127. Penalty for default.

Any person, natural or corporate, found in default of one or more provisions shall be liable, upon summary conviction, to a fine not to exceed two thousand dollars.

128. Deputy registrar.

(1) The Minister may appoint a person or persons to be Deputy Registrar of Companies.

(2) The Deputy Registrar of Companies shall assist the Registrar of Companies in the performance of his duties under this Ordinance.

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129. Certificate of good standing.

The Registrar of Companies shall, upon request by any registered agent, issue a certificate of good standing under his hand and seal certifying, that a company subject to this Ordinance is of good standing if he is satisfied that

- (a) the name of the company is on the Register;
- (b) the company has paid all fees required under this Ordinance; and
- (c) the company is not in contravention of any of the provisions of this Ordinance or is in the process of being wound-up and dissolved.

130. Evidence of beneficial owners

(1) Every registered agent shall keep and maintain a record of each bearer share certificate issued by any corporation for which it acts as registered agent and such record shall contain the following information:

- (a) the name of the company issuing the bearer share certificate;
- (b) the identification number of the bearer share certificate;
- (c) the class of shares and number of shares contained in the bearer share certificate;
- (d) the identity of the beneficial owner of the shares contained in the bearer share certificate, that is to say, the name, address, date of birth, nationality and such other details of identification as may, from time to time, be prescribed by the Minister.

Provided that where the beneficial owner of the shares contained in the bearer share certificate is a corporation, the evidence of identity shall be evidence of the persons who are beneficial owners of that corporation, except where the company is a publicly traded company on a recognised stock exchange approved by the Minister.

(2) The registered agent shall, where custody of the bearer share certificate is transferred to another registered agent, notify the Registrar within seven days of such transfer and such notice shall include the particulars of the new registered agent.

(3) A registered agent who fails or refuses to comply with the provisions of this section shall be liable to a fine not exceeding thirty thousand dollars or revocation of the registered agent's licence or to both.

(4) The Regulator for Nevis shall have the power under the preceding section to levy fines against registered agents who are in default and/or recommend the revocation of their licences to the Minister:

Provided

- (a) no such fine shall be levied or licence revoked unless the registered agent in default is advised of its default and given 30 days within which to remedy such default;
- (b) any decision by the Regulator is subject to appeal in writing by any registered agent affected by such decision to the Financial Services Regulatory Commission within 90 days of the date of such decision;

- (c) any decision of the Financial Services Regulatory Commission is subject to the appeal by any person dissatisfied with such decision to the High Court within 90 days of the date of the date of such decision.

(5) The preceding provisions shall apply to any other person who may from time to time be authorized by the Minister to act as a custodian of the bearer share certificates.

(6) All corporations incorporated pursuant to this Ordinance which have issued bearer share certificates prior to the date of this amendment shall be required within 12 months from the date hereof to provide the registered agent of such corporations with information as to the beneficial owners of the shares contained in such certificates in accordance with the provisions of subsection (1)(d) above and a full and detailed account of changes if any in beneficial ownership of such shares since their issuance by the corporation.

(7) The Registered Agent of each such corporation referred to in subsection 6 shall notify the Registrar within 30 days of the expiration of the 12 month period of which corporations have failed and /or refuse to comply with the provisions of sub-section 6 and upon such notification the Registrar shall have power to strike such corporation from the register:

Provided that such a corporation can be restored to the register within 12 months of the date of being struck upon satisfying the Registrar that the required information has been provided to the Registered Agent and upon paying the prescribed fee for reinstatement on the register.

FIRST SCHEDULE

Nevis Business Corporation Ordinance

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These regulations may be cited as the Nevis Business Corporation (Fees) Regulations.

2. Fees.

The fees to be paid under the Nevis Business Corporation Ordinance shall be as set forth in the Schedule.

SCHEDULE TO THE REGULATIONS

(Regulation 2)

1. The following fees shall be paid for the filing and issuance of documents:-

Type of Document	ECS	US\$
A. Articles of Incorporation (includes Certificate of Incorporation)	608.00	225.00
B. Certificate of Endorsement	27.00	10.00
C. Articles of Amendment	405.00	150.00
D. Articles of Merger or Consolidation	810.00	300.00
E. Re-stated Articles of Incorporation	270.00	100.00
F. Articles of Dissolution	405.00	150.00
G. Certificate of Renewal	14.00	5.00
H. Certificate of Correction	270.00	100.00
I. Certificate of Good Standing	80.00	30.00
J. Voluntary filings	80.00	30.00
K. Name Reservation	68.00	25.00
L. Renewal of Name Reservation	68.00	25.00
M. Certified True Copies of Filed Documents (including first three pages page) each additional page	14.00 1.00	5.00 .50
N. Certificate certifying true copy	68.00	25.00
O. Filing Notice of change of Registered Agent and Registered Office	100.00	37.00
P. Apostille	55.00	20.00
Q. Transfer of Domicile	608.00	225.00
R. Certificate of Departure	608.00	225.00
S. Emergency Transfer of Domicile	810.00	300.00

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T.	Tax Exemption Letter	135.00	50.00
U.	Any other certificate	68.00	25.00

2. Every corporation shall pay an annual renewal fee of Five Hundred and Ninety-Four Eastern Caribbean Dollars (EC\$594.00) or Two Hundred and Twenty United States Dollars (US\$220.00) by or before the anniversary of its date of registration.
3. Any corporation that fails to pay the annual fee by or before the due date shall be subject to an additional charge
 - (a) of two Hundred and seventy Eastern Caribbean Dollars (EC\$270.00) or one hundred United States dollars (US\$100.00) if the annual fee is paid after one month but before the expiration of six months from the due date:
 - (b) of five hundred and ninety-four Eastern Caribbean dollars (EC\$594.00) or two hundred and twenty United States dollars (US\$220.00) if the annual fee is paid after six months but before the expiration of one year from the due date.
4. The Registrar shall not permit any person to conduct any search unless that person first pays a fee of twenty-seven Eastern Caribbean dollars (EC\$27.00) or ten United States dollars (US\$10.00).
5. A corporation that is removed from the register shall pay a fee of two hundred and seventy Eastern Caribbean dollars (EC\$270.00) or one hundred United States dollars (US\$100.00) in addition to all outstanding fees and charges before that corporation may be re-instated on the Register.