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I assent,

SIR S.W. TAPLEY SEATON  
G.C.M.G., C.V.O., Q.C., J.P.

*Governor-General*

2<sup>nd</sup> August 2017.

## ISLAND OF NEVIS

### No. 1 of 2017

**AN ORDINANCE** to repeal and replace the Nevis Business Corporation Ordinance Cap. 7.01(N) as amended, with the Nevis Business Corporation Ordinance 2017 to provide for the establishment of international business corporations in the Island of Nevis and to provide for matters incidental or consequential thereto.

*[Published 2<sup>nd</sup> November 2017, Official Gazette No. 56 of 2017.]*

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:

#### **PART I - PRELIMINARY MATTERS**

##### **1. Short title and commencement.**

(1) This Ordinance may be cited as the Nevis Business Corporation Ordinance, 2017.

(2) This Ordinance shall come into force on a date to be appointed by the Minister by Order published in the *Gazette*.

##### **2. Interpretation.**

(1) In this Ordinance, unless the context otherwise requires, the term:

“*acknowledgement*” means the admission, affirmation or declaration as genuine of the affixation of a person's signature to an instrument;

“*Advisory Committee*” means the Ordinance Advisory Committee established under section 144;

“*Articles of Incorporation*” include:

- (a) the original Articles of Incorporation or any other instrument filed or issued under any law to incorporate a domestic or foreign corporation, amended, supplemented, corrected or restated by articles of amendment, merger or consolidation, or other instruments filed or issued under any law; or

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(b) a special law or charter creating a domestic or foreign corporation, as amended, supplemented or restated;

“*attestation*” means the act of witnessing an acknowledgement, and the term “*attested*” shall be construed accordingly;

“*attorney-at-law*” means a person whose name has been entered on the Roll of attorneys at law pursuant to the Legal Profession Act, 2008, as amended;

“*authenticated translation*” means a translation into the English language of an instrument which was drafted in a language other than the English language or a language which does not use Latin alphabet characters and was prepared by a professional translator who is accredited by a court of law, a government agency or a recognised international organisation;

“*authorised custodian*” means an authorised registered agent who from time to time may be authorised by the Minister to act as a custodian of bearer shares certificates;

“*beneficial owner*” means the natural person(s) who ultimately owns or controls a corporation and/or the natural person on whose behalf a transaction is being conducted and/or the natural person who exercises ultimate effective control over a corporation;

“*Certificate of Departure*” means the instrument as filed by a corporation with the Registrar of Corporations to make application for a transfer of domicile to a foreign jurisdiction and shall include any application filed in like manner, howsoever described or named;

“*charge*” means any instrument which creates a security interest, over a corporation’s shares or property, whether fixed or floating, wherever situated, and any variation of such instrument, which is created after the effective date of this Ordinance, but not an interest arising by operation of law;

“*chargee*” means a person who holds a charge over the shares, interest or property of a corporation;

“*chargor*” means the shareholder of a corporation who pledges their shares or property in a corporation as security for a debt owed to a chargee;

“*charter*” means the instrument which is filed in a foreign domicile to incorporate a foreign corporation;

“*consolidated corporation*” means the new corporation into which two (2) or more constituent corporations are consolidated;

“*consolidation*” means a procedure whereby any two (2) or more corporations consolidate into a new corporation incorporated by the consolidation;

“*constituent corporation*” means an existing corporation that is participating in the merger or consolidation with one (1) or more other corporations;

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“*corporation*” or “*domestic corporation*” means a corporation incorporated, merged or consolidated under this Ordinance, or a foreign corporation which has been redomiciled to Nevis and registered under this Ordinance;

“*creditor*” means any person to whom money is owed and includes the creditor of a shareholder, including a judgment creditor and an assignee from such creditor of any claim and includes any person who alleges a cause of action against a shareholder;

“*Deputy Registrar of Corporations*” means any person appointed by the Minister to assist the Registrar of Corporations in performing his duties under this Ordinance;

“*dollars*” or “*\$*” means Eastern Caribbean Currency unless expressly stated otherwise in this Ordinance;

“*earlier charge*” means any instrument which creates a security interest, over a corporation’s shares or property, whether fixed or floating, wherever situated, and any variation of such instrument, which is created before the effective date of this Ordinance, but not an interest arising by operation of law;

“*emergency condition*” shall include but not be limited to any of the following events:

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

“*endorsement*” means the seal, stamp or handwritten signature of the Registrar of Corporations or any other method now known or hereinafter invented or adopted which may be used to indicate the approval of an instrument by the Registrar of Corporations;



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*“foreign corporation”* means any corporation which has been incorporated in any jurisdiction other than Nevis;

*“foreign domicile”* means the jurisdiction of registration of a foreign corporation or such jurisdiction, other than Nevis, to which a corporation seeks to redomicile;

*“High Court”* means the High Court of Saint Christopher and Nevis;

*“insolvent”* means a condition when a person known as a “debtor” is unable to pay their debts as such debts become due;

*“inspector”* means a person appointed in accordance with section 97;

*“in writing”* means any form of communication now known or hereinafter invented or adopted, including but not limited to, mechanical, electronic or digital which is used to preserve or record information unaltered for future reference;

*“limited liability company”* means a company formed under the Nevis Limited Liability Company Ordinance 2017 or a limited liability company which was formed under the law of another jurisdiction which has been redomiciled to Nevis and registered under such law;

*“merger”* means a procedure whereby any two (2) or more corporations merge into a single corporation, which is any one (1) of the constituent corporations;

*“Minister”* means the Minister for the time being charged with the responsibility for finance in the Nevis Island Administration;

*“Nevis Company”* means a company incorporated and registered under the Companies Ordinance, Cap. 7.06;

*“pledgee”* means a person to whom a pledge is made;

*“provisions”* includes the provisions of this Ordinance, any Part or any Order hereunder;

*“registered agent”* means

- (a) an attorney-at-law or a law firm; or
- (b) a Nevis Company,

which has been duly licensed by the Nevis Island Administration to carry on the business of registered agent of corporations;

*“registered office”* means the location described in section 14 of this Ordinance;

*“Registrar of Corporations”* means the person appointed by the Minister to perform the duties of Registrar under this Ordinance;

*“surviving corporation”* means the constituent corporation into which one (1) or more other constituent corporations are merged;

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“treasury shares” means shares which have been issued, have been subsequently acquired, and are retained un-cancelled by the corporation.

(2) A reference in this Ordinance to the masculine shall include the feminine or neuter.

**3. Application of the Ordinance.**

(1) A corporation incorporated or subject to this Ordinance which does business in Saint Christopher and Nevis shall be subject to and comply with all requirements of the Companies Ordinance, Cap. 7.06 (N) in the same manner as a Nevis Company.

(2) A corporation to which the Nevis International Insurance Ordinance, Cap.7.07 (N) is applicable shall also be subject to this Ordinance, but the provisions of the Nevis International Insurance Ordinance, Cap.7.07 (N), shall prevail where those provisions conflict with the provisions of this Ordinance.

(3) In construing this Ordinance, any part or section hereof, the High Court, any court of competent jurisdiction and any other person shall refer to the common law, the Regulations to this Ordinance or to the construction of similar laws in other jurisdictions.

**4. Form of instruments and filing.**

(1) Where any provision of this Ordinance requires an instrument to be filed with the Registrar of Corporations, such instrument shall be filed by the registered agent or pursuant to its authority and comply with the provisions of this Part unless otherwise expressly provided for under this Ordinance.

(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 and may be written in characters which do not use the Latin alphabet and an authenticated translation of the corporate name must be provided.

(3) All instruments filed or required to be filed shall be signed by at least:

- (a) one director of the corporation; or
- (b) the registered agent of the corporation; or
- (c) such other person duly delegated such authority by a director in whom such authority resides.

(4) An instrument which is signed by the registered agent on behalf of a corporation shall be certified by such registered agent to have been signed pursuant to the written authority of the board of directors, but such written authority may be filed with the Registrar of Corporations at the option of the registered agent.

(5) Where a provision of this Ordinance requires an instrument to be acknowledged, such requirement means, in the case of execution of that instrument within Nevis, that the person shall sign the instrument to 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 declare within that instrument that it was so signed in Nevis.

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(6) Where a provision of this Ordinance requires an instrument to be acknowledged, such requirement means, in the case of execution of an instrument within Saint Christopher, 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 of oaths or other person authorised to take acknowledgements, who shall attest that he knows the person making the acknowledgement to be the person who executed the instrument.

(7) Where an instrument is executed outside of Saint Christopher and Nevis, an acknowledgement means that the person signing the instrument shall acknowledge that it is his act and deed or the act and deed of the corporation as the case may be.

- (a) An instrument executed in accordance with subsection (7) shall be acknowledged and executed before:
  - (i) a notary public or any other person authorised to take acknowledgements according to the laws of the place of execution;
  - (ii) a consul or vice consul of Saint Christopher and Nevis or other governmental official of Saint Christopher and Nevis authorised to take acknowledgements; or
  - (iii) in the absence of any of the persons outlined in paragraphs (i) and (ii) of subsection 7(a), a consular official of another government having diplomatic relations with Saint Christopher and Nevis.
- (b) A person before whom an instrument is acknowledged under subsection 7(a) shall attest that he knows the person making the acknowledgement to be the person who executed the instrument.
- (c) When the acknowledgement shall be taken by a notary public or any other person authorised to take acknowledgements, except a government official of Saint Christopher or Nevis or foreign consular official, the signature of such person who has authority shall be attested to by:
  - (i) a consul or vice consul of Saint Christopher and Nevis; or in his absence,
  - (ii) a consular official of another government having diplomatic relations with Saint Christopher and Nevis;
  - (iii) a government official of the place of execution who is authorised to make such attestation; or
  - (iv) an Apostille according to the Convention de la Haye du 5 Octobre 1961.

(8) Where a provision of this Ordinance requires an instrument to be filed with the Registrar of Corporations, such requirement means that:

- (a) an appropriate receipt evidencing payment of all appropriate fees shall be delivered to the office of the Registrar of Corporations, and within ten (10)

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days of the date of the receipt, the original instrument together with a duplicate instrument, both signed and acknowledged;

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

(9) An instrument relating to a domestic or foreign corporation and filed with the Registrar of Corporations under this Ordinance may be corrected with respect to:

- (a) any error apparent on the face; or
- (b) a defect in the execution of that instrument

by filing with the Registrar of Corporations a Certificate of Correction, executed and acknowledged in the manner required for the original instrument.

(10) 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.

(11) The correcting instrument when filed shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the instrument as corrected shall be effective from the filing date.

##### **5. Certificates and certified copies as evidence.**

All certificates issued by the Registrar of Corporations in accordance with the provisions of this Ordinance and all duplicates of instruments filed with the Registrar of Corporations in his office in accordance with the provisions of this Ordinance shall, when certified by the Registrar of Corporations or his Deputy, 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 instruments.**

(1) The Minister shall prescribe a Schedule of Fees for the filing and issuance of instruments under this Ordinance and the fees payable in respect of this Ordinance shall be paid in dollars or in another currency as prescribed by the Minister.

(2) The Minister shall prescribe the fees for certified copies of documents and for filing, recording or indexing papers.

**7. Annual registration fee.**

A corporation shall pay to the Office of the Registrar of Corporations an annual fee as prescribed in the Schedule of Fees required to be prescribed by the Minister under section 6 and that annual fee shall be paid on behalf of the corporation by its registered agent.

**8. Waiver of notice.**

Where a notice is required to be given to any shareholder, director or any other person under the provisions of this Ordinance or under the provisions of the Articles of Incorporation or Bylaws of the corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed to be equivalent to the giving of such notice.

**9. Notice to holders of bearer shares.**

(1) Any notice or information required to be given to holders of bearer shares shall be provided in the manner designated in the corporation's Articles of Incorporation or Bylaws or, if the notice can no longer be provided as stated therein, the notice shall be published in a publication of general circulation in Nevis or in a place where the corporation has a place of business.

(2) Any notice requiring a shareholder to take action in order to secure a right or privilege shall be published or given in time to allow a reasonable opportunity for such action to be taken.

**PART II – CORPORATE PURPOSES AND POWERS****10. General powers.**

(1) A corporation incorporated under this Ordinance shall be utilised for lawful business purposes only.

(2) Subject to any limitations provided in this Ordinance, any other law of Nevis, any other law of Saint Christopher and Nevis, its Articles of Incorporation or its Bylaws, a corporation shall, in furtherance of its corporate purposes irrespective of corporate benefit and whether or not enumerated in its Articles of Incorporation or Bylaws, have power to

- (a) have perpetual succession;
- (b) sue and be sued in all courts of competent jurisdiction;
- (c) have a corporate seal, and to alter such seal at its pleasure, and to use it by

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causing it or a facsimile to be affixed or impressed or reproduced in any other manner;

- (d) 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;
- (e) 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) 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) 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 real or personal property or any interest therein, wherever situated, in any currency;
- (h) 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) do business, carry on its operations, and have offices and exercise the powers granted by this Part in any jurisdiction within or outside of Saint Christopher and Nevis, provided that any business conducted within Saint Christopher and Nevis is restricted to the activities specified in section 136;
- (j) to elect or appoint officers, 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) 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) make donations for the public welfare or for charitable, educational, scientific, sporting, health, civic or similar purposes;
- (m) 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) 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;

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- (o) be a promoter, incorporator, partner, member, associate, or manager of any partnership, corporation, joint venture, trust or other enterprise;
- (p) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is incorporated;
- (q) to be recognised 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) protect the assets of the corporation for the benefit of the corporation, its creditors and its shareholders, and at the discretion of the directors, for any person having a direct or indirect interest in the corporation.

**11. Defence of *ultra vires*.**

(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:

- (a) 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. If the unauthorised 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;
- (b) in an action by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a derivative suit against the incumbent or former officers or directors of the corporation for loss or damage due to their unauthorised act; or
- (c) in any court proceedings in the High Court to dissolve the corporation, or to enjoin it from the doing of unauthorised business.

**12. Corporation as legal person.**

(1) A corporation shall be a legal person with separate rights and liabilities, distinct from its shareholders.

(2) A corporation shall be a proper plaintiff in a legal action to assert a legal right of the corporation and a proper defendant in a legal action to defend a legal right of the corporation; and the naming of a shareholder, director, officer or employee of the corporation

as a party to a legal action 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.

**13. Liability of directors, shareholders and officers.**

Unless otherwise provided for by law, the Articles of Incorporation, Bylaws, any agreement signed by such persons, the directors, officers, employees and shareholders of a corporation shall not be liable for any corporate debts or obligations.

**PART III – REGISTERED AGENT AND SERVICE OF PROCESS**

**14. Registered agent.**

(1) A corporation which is subject to this Ordinance shall at all times have a registered agent in Nevis. A corporation which fails to maintain a registered agent shall be in contravention of this Ordinance.

(2) A registered agent shall at all times be licensed by the Nevis Island Administration and shall maintain a physical place of business in Nevis which shall be the address of the corporation's registered office.

(3) The Minister shall prescribe the application process and fees for the licencing of registered agents under this Ordinance.

(4) No person shall be or agree to be the registered agent of a corporation unless that person holds a valid licence to provide registered agent services issued by the Nevis Island Administration under this Ordinance.

**15. Resignation and change of registered agent.**

(1) A registered agent of a corporation may resign as such registered agent by giving not less than thirty (30) days written notice to the corporation of his intention to resign as registered agent of that corporation on the date specified in the notice.

(2) A notice given to a corporation by a registered agent under subsection (1) shall:

- (a) state that it is a requirement under this Ordinance that the corporation have a registered agent in Nevis duly licensed by the Nevis Island Administration;
- (b) direct the corporation to the list of authorised registered agents as published from time to time; and
- (c) notify the corporation of all penalties applicable under the Ordinance for failure to maintain a registered agent in accordance with section 14.

(3) Any resignation pursuant to subsection (1) shall not become effective until written notice of such resignation, together with the prescribed fee is delivered to the Registrar of Corporations.

(4) The written notice of resignation filed by the registered agent with the Registrar of Corporations under subsection (3) shall contain a statement that:



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- (a) written notice of resignation was given to the affected corporation at least thirty (30) days prior to filing the notice with the Registrar of Corporations, by mailing or delivering such notice to the corporation at its address last known or by email to the corporation's last known email address and shall set forth the date of such notice; and
- (b) all fees and charges owing to the said registered agent have been paid in full by the corporation.

(5) The Registrar of Corporations shall not accept any resignation from a registered agent under subsection (4) unless the notice filed by the registered agent complies with the provisions of that subsection.

(6) After receipt of the notice of resignation of its registered agent, a corporation shall obtain and designate a new registered agent to take the place of the registered agent so resigning. A corporation who fails to obtain and designate a new registered agent as aforesaid prior to the expiration of a period of thirty (30) days after the filing by the registered agent of the notice of resignation, contravenes this Ordinance and is liable to a penalty fee of One Thousand Three Hundred and Fifty Dollars (\$1,350.00) or Five Hundred Dollars United States Currency (USD\$500.00).

(7) A registered agent of a corporation may resign and appoint a successor registered agent by paying the prescribed fee and filing a notice of change of registered agent with the Registrar of Corporations.

(8) A notice of change of registered agent under subsection (7) shall state that the registered agent resigns, set forth the name and physical place of business of the successor registered agent, and shall have attached:

- (a) a statement that the corporation has ratified and approved such change of registered agent; and
- (b) written consent to act by the successor registered agent.

(9) Upon filing a notice of change of registered agent and provided it satisfies the requirements of subsections (7) and (8), the successor registered agent shall become the registered agent of the corporation and the successor registered agent's address, as stated in the notice of change of registered agent shall become the address of the registered office of the corporation in Nevis.

(10) The Registrar of Corporations may issue a certificate under this section certifying the resignation or change of registered agent of a corporation.

(11) The filing of any notice under Sections 15 and 16 shall be deemed to be an amendment to the Articles of Incorporation of the corporation affected thereby, but a corporation affected by the change shall not be required to take any further action to amend its Articles of Incorporation.

**16. Registered agent resigned by corporation.**

(1) A corporation may resign its registered agent by giving not less than thirty (30) days written notice to the registered agent of its intention to revoke the designation as registered agent, provided that a successor registered agent is appointed.

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(2) A resignation under subsection (1) shall not be effective until notice of such resignation and appointment of a successor registered agent, is filed with the Registrar of Corporations by the successor registered agent, together with the prescribed fees and shall have attached:

- (a) a statement that the corporation has given written notice of resignation to the affected registered agent at least thirty (30) days prior to filing the notice with the Registrar of Corporations, by mailing or delivering such notice to the registered agent at its address last known or by email to the registered agent's last known email address and shall set forth the date of such notice; and
- (b) a statement by the resigned registered agent that all fees and charges owing to the said registered agent have been paid in full by the corporation.

(3) The Registrar of Corporations shall not accept any resignation from a corporation by its successor registered agent under subsection (2) unless the notice filed by the successor registered agent complies with the requirements of this section.

**17. Change of registered office of corporation.**

(1) Where a registered agent changes its physical place of business which is also the registered office of the corporation then that registered agent shall notify the corporation in writing of its new address at which such registered agent will maintain the registered office of the corporation.

(2) The registered agent shall file a notice of change of address together with the prescribed fees, with the Registrar of Corporations, setting forth the address at which such registered agent has maintained the registered office of the corporation and further certifying the new address to which such registered office will be changed on a given day.

(3) A copy of the notice as filed with the Registrar of Corporations shall be delivered to the corporation by the registered agent.

(4) The filing of a notice of change of address under this section shall be deemed to be an amendment to the Articles of Incorporation of the corporation but the corporation affected by the change shall not be required to take any further action to amend its Articles of Incorporation.

**18. Service of process.**

(1) The address for service of process of any documents to be served on a corporation in a legal action shall be the registered office of the corporation and shall be delivered to the registered agent of the corporation.

(2) Service of process on a registered agent may be made by personal delivery or 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.

(3) A registered agent, when served with process, notice or demand for the corporation which he represents, shall transmit the same to the corporation by personal

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notification or in the following manner: 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. Such mailing shall be by registered mail. 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. 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 registered 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.

(4) Where a corporation which is registered under this Ordinance fails to maintain a registered agent, or whenever said registered agent cannot with reasonable diligence be found at their physical place of business, then the Registrar of Corporations or his appointee shall be the agent of such corporation upon whom any process or notice or demand required or permitted by law to be served may be served.

(5) Service on the Registrar of Corporations or his appointee as agent of a corporation shall be made by personally delivering to any person authorised by the Registrar of Corporations to receive such service, at the office of the Registrar of Corporations, duplicate copies of such process together with the prescribed fee.

(6) The Registrar of Corporations or his appointee shall promptly send one (1) 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 Corporations or his 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 incorporated or in any other manner permitted by Law.

(7) The Registrar of Corporations shall keep a record of each process served upon him under this section, including the date of service.

(8) The Registrar of Corporations shall, upon request made within five (5) years of such service, issue a certificate under his seal certifying as to the receipt of the process by an authorised person, the date and place of such service, and the receipt of the prescribed fee.

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

**PART IV – INCORPORATION OF CORPORATIONS  
AND CORPORATE NAMES**

**19. Incorporator.**

A person may incorporate a corporation under this Ordinance.

**20. Corporate name.**

- (1) Except as otherwise provided in subsection (2), the name of a corporation:
  - (a) shall end with the corporate suffix “*Corporation*”, “*Incorporated*”, “*Limited*”, or any other recognized corporate suffixes, similar words or an abbreviation of one of such or other corporate suffix, similar words or other words which 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 register of corporations or on the reserved name list of corporations maintained by the Registrar of Corporations or a name so similar to any such name as to tend to confuse or deceive.
- (2) The provisions of subsection (1) shall not:
  - (a) require any corporation, which is listed on the register of corporations on the effective date of this Ordinance, to add to, modify or otherwise change its corporate name; and
  - (b) prevent a corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganisation or consolidation of one (1) or more domestic or foreign corporations, or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another domestic corporation, including its name, from having the same name as any of such corporations if at the time such other corporation was existing under the laws of Nevis or was authorised to do business in Nevis.

**21. Non-Latin alphabet characters.**

- (1) The name of the corporation on the Articles of Incorporation may be written in characters using the Latin alphabet or any other alphabet.
- (2) If the name of the corporation is not written in the Latin alphabet, then the name on the Articles of Incorporation must also include an authenticated translation and the registered agent shall forward the corporation’s name to the Registrar of Corporations via any mechanical, electronic or digital communication and storage method now known or hereinafter invented or adopted.
- (3) Where a corporation has been incorporated under this Ordinance and the name on its Articles of Incorporation is written in non-Latin alphabet characters, the Registrar shall issue a Certificate of Incorporation and any other certificates using the corporation’s non-Latin alphabet character name and its authenticated translation.

**22. Register of corporations.**

The Registrar of Corporations shall maintain a register of corporations which contains an alphabetical and/or numerical list of all of the names of the corporations registered under this Ordinance and a list of reserved names of corporations.

**23. Reservation of name.**

(1) A registered agent may reserve a name with the Registrar of Corporations provided said reservation is made in accordance with this section and is made in good faith for subsequent use in the incorporation of a corporation under this Ordinance or for use in changing the name of a corporation already registered under this Ordinance.

(2) A name may be reserved by a registered agent on behalf of a foreign corporation which has filed for a transfer of domicile to Nevis.

(3) An application to reserve a name shall be delivered to the Registrar of Corporations together with the prescribed fee and that application shall set forth:

- (a) the name to be reserved;
- (b) the name and address of the applicant; and
- (c) a statement of the reason for the application in accordance with subsections (1) and (2) above.

(4) If the name to be reserved is available for use, the Registrar of Corporations shall enter the name upon the reserved name list and issue a Certificate of Name Reservation in the name to be reserved, to the registered agent making the application and the Certificate of Name Reservation shall set forth:

- (a) the information contained in the application therefor; and
- (b) the date the name was entered upon the reserved name list; which date shall be the date of reservation.

(5) As of the date of the name reservation, the name reserved shall be maintained upon the reserved name list by the Registrar of Corporations and shall not be used except by the registered agent, in whose name the Certificate of Name Reservation has been issued.

(6) The reservation shall terminate upon the expiration of one hundred twenty (120) days following the date of reservation unless sooner renewed.

(7) Upon payment of the required fees, the reservation may be renewed with the Registrar of Corporations for one like period. 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.

(8) The Certificate of Name Reservation or any renewals thereof shall be evidenced to the Registrar of Corporations at the time the name is utilised by the registered agent in whose name the certificate has been issued.

**24. Contents of Articles of Incorporation.**

(1) The Articles of Incorporation shall set forth:

- (a) the name of the corporation;
- (b) the authenticated translation of the name of the corporation, if it is so registered;

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- (c) a statement that the corporation is incorporated under this Ordinance;
- (d) the succession of the corporation if other than perpetual;
- (e) the purpose or purposes for which the corporation is incorporated. 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 incorporated 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;
- (f) the name of the registered agent of the corporation;
- (g) the registered office of the corporation in Nevis which shall be the address of its registered agent;
- (h) the aggregate number of shares which the corporation shall have authority to issue; 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;
- (i) 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;
- (j) 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;
- (k) if bearer shares are authorised to be issued:
  - (i) appropriate procedural provisions respecting the rights and obligations of bearer shareholders including those relating to notice of meetings or other action and payment of dividends and qualification for voting; or
  - (ii) a statement that the provisions required by (i) above shall be set forth in the Bylaws.
- (l) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the Articles of Incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (m) if the initial directors are to be named in the Articles of Incorporation, the names and addresses of the persons who are to serve as directors until the first annual general meeting of the shareholders or until their successors shall be elected and qualify;
- (n) the name and address of each incorporator; and

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- (o) any provision, not inconsistent with law, which the incorporator elects to set forth in the Articles of Incorporation for the regulation of the affairs of the corporation, including the designation of initial directors, subscription of shares by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors than are otherwise prescribed in this Ordinance, and any provision which under this Ordinance is required or permitted to be set forth in the Bylaws.

(2) It shall not be necessary to enumerate in the Articles of Incorporation of the general corporate powers stated in section 10.

**25. Powers and rights of chargees.**

The Articles of Incorporation or Bylaws may confer upon chargees, whether or not secured by charge, any one (1) or more of the following powers and rights:

- (a) the power to vote on the election of directors, or other matters specified in the Articles of Incorporation or Bylaws;
- (b) the right of inspection of books and records, minutes, and other corporate records;
- (c) any other rights to information concerning the financial condition of the corporation which its shareholders have or may have.

**26. Execution and filing of Articles of Incorporation.**

Articles of Incorporation shall be signed and acknowledged by each incorporator and filed with the Registrar of Corporations in conformity with the provisions of section 4.

**27. Effect of filing of Articles of Incorporation.**

(1) The corporate existence shall, upon filing the Articles of Incorporation, be effective as of the filing date stated thereon. The endorsement by the Registrar of Corporations, as required by section 4 shall be conclusive evidence that all conditions precedent required to be performed by the incorporator(s) have been complied with and that the corporation has been incorporated under this Ordinance.

(2) When a corporation has been incorporated under this Ordinance, the Registrar of Corporations shall issue a Certificate of Incorporation under his endorsement certifying that the corporation has been duly incorporated and an Endorsement Certificate certifying that the corporation has filed Articles of Incorporation.

**28. Inspection of the register of corporations.**

(1) 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 of Corporations.

(2) The Registrar of Corporations 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 of Corporations under this Ordinance.

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

### **29. Corporation Search Report.**

(1) The Registrar of Corporations shall, upon request of any person who has paid the prescribed fee, issue a Corporation Search Report, under his endorsement, giving public information available on the records of a corporation, in any format as determined by the Registrar of Corporations.

(2) A Corporation Search Report issued by the Registrar or his deputy is admissible in evidence to the same extent as the original written records or instruments would be.

### **30. Certificate of Good Standing.**

(1) The Registrar of Corporations shall, upon request by a registered agent, issue a Certificate of Good Standing under his endorsement, certifying that a corporation subject to this Ordinance is in good standing if he is satisfied that:

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

(2) The Certificate of Good Standing issued by the Registrar of Corporations under this section is limited to the corporation's current state of compliance under this Ordinance and should not be taken as a warranty or representation by the Registrar of Corporations concerning the corporation's compliance with other laws of Nevis which the Registrar does not administer.

### **31. Organisational meeting.**

(1) Subject to subsection (3), the initial director(s) named in the Articles of Incorporation or the incorporator(s) or their transferees shall, within a reasonable time after the filing of the Articles of Incorporation, hold an organisational meeting within or outside of Nevis either in person or by proxy.

- (2) The purpose of the meeting shall be:
- (a) to adopt Bylaws;
  - (b) to transact such business as may come before the meeting;
  - (c) to do such acts to perfect the organisation of the corporation as are deemed appropriate; and,
  - (d) to elect directors, if the initial directors are not named in the Articles of Incorporation, to serve or hold office until the first annual general meeting of shareholders or until their successors are elected and qualify.



(3) If the Articles of Incorporation state that the incorporator(s) has subscribed for shares of the corporation, then such subscriptions may be transferred prior to the organisational meeting and such transferees may hold the organisational meeting of incorporators.

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

### **32. Bylaws.**

(1) A corporation incorporated under this Ordinance shall have Bylaws.

(2) The initial Bylaws of a corporation may be adopted by the incorporator or by its board of directors.

(3) Except as otherwise provided in the Articles of Incorporation, Bylaws may be amended, repealed or adopted by vote of the shareholders. If so provided in the Articles of Incorporation or in the Bylaws which have been adopted by the shareholders, Bylaws may also be amended, repealed or adopted by the board of directors, but any Bylaws which have been adopted by the directors may be amended or repealed by shareholders entitled to vote thereon.

(4) The Bylaws shall contain appropriate procedural provisions respecting the rights and obligations of bearer shareholders as set forth in section 24, in the event the Articles of Incorporation do not contain such provisions.

(5) The Bylaws may contain any provision 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, not inconsistent with this Ordinance, any other Ordinance of Nevis, any Act of Saint Christopher and Nevis or the Articles of Incorporation.

## **PART V – AMENDMENTS TO ARTICLES OF INCORPORATION**

### **33. Right to amend Articles of Incorporation.**

A corporation may amend its Articles of Incorporation from time to time in any and as many respects as may be desired, provided such amendment contains only such provisions as might lawfully be contained in the original Articles of Incorporation, filed at the time of making such amendment.

### **34. Reduction of stated capital by amendment.**

(1) A reduction of stated capital which is not authorised by action of the board of directors may be effected by an amendment of the Articles of Incorporation.

(2) A reduction of stated capital shall not be made by amendment unless, after such reduction, the stated capital exceeds the aggregate preferential amount payable upon involuntary dissolution upon all issued shares having preferential rights in assets, plus the par value of all other issued shares with par value.

**35. Procedure for amendments.**

(1) An amendment to the Articles of Incorporation may be authorised 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 of directors:

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

(3) The incorporators may authorise the amendment of the Articles of Incorporation by consent in writing, provided that 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 of directors to authorise amendments under any other section.

**36. 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 authorisation of an amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorised by vote of the holders of a majority of all outstanding shares of the class if the amendment would:

- (a) increase or decrease the aggregate number of authorised shares of such class;
- (b) increase or decrease the par value of the shares of such class; or
- (c) 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 (1) 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.

**37. 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 incorporated;

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- (b) the date its Articles of Incorporation were filed with the Registrar of Corporations and the date of filing of any amendments to the Articles of Incorporation;
- (c) each section affected by the amendment;
- (d) a statement of the manner in which any amendment relating to a change or elimination of issued shares shall be effected;
- e) a statement of the manner in which any amendment relating to a reduction in stated capital shall be effected and the amounts from which and to which the stated capital is reduced; and
- (f) the manner in which the amendment of the Articles of Incorporation was authorised.

(2) The Articles of Amendment shall be filed with the Registrar of Corporations in accordance with the provisions of section 4.

(3) Upon filing Articles of Amendment with the Registrar of Corporations, the amendment shall become effective as of the filing date stated thereon and the Articles of Incorporation shall be deemed to be amended accordingly.

**38. Status of legal action.**

(1) An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending legal action to which it shall be a party, or the existing rights of persons other than shareholders;

(2) In the event that the corporation's name has been changed, then no legal action which is brought by or against the corporation under its former name shall abate for that reason.

**39. Right of dissenting shareholders to payment.**

A holder of any adversely affected shares who does not vote on or consents in writing to an amendment to the Articles of Incorporation shall, subject to and by complying with the provisions of section 100, 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; or
- (b) create, alter, or abolish any provision or right in respect of the redemption of any outstanding shares; or
- (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 authorised of any existing or new class.

**40. Restated Articles of Incorporation.**

(1) At any time after its Articles of Incorporation have been amended, a corporation may by action of its board of directors, without necessity of vote of the shareholders, prepare an instrument entitled “*Restated Articles of Incorporation*”, which shall integrate into one (1) instrument, 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 instrument purports merely to restate but not to change the provisions of the original Articles of Incorporation as amended and that there is no discrepancy between the said provisions and the provisions of the restated Articles of Incorporation.

(3) The restated Articles of Incorporation shall be executed, acknowledged and filed as provided in section 4.

(4) A restated Articles of Incorporation filed with the Registrar of Corporations 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.

**PART VI – CORPORATE FINANCE****41. Classes and series of shares.**

(1) A corporation shall have power to issue the number of shares stated in its Articles of Incorporation.

(2) Shares issued by a corporation pursuant to subsection (1) may be of one (1) or more classes or one (1) or more series within any class thereof, any or all of which classes may be of shares with par value or shares without par value, and may be registered or bearer shares, with such voting powers, full or limited, or without voting powers and in such series and with such designations, preferences and relative, participating, optional or special rights and qualifications, limitations or restrictions thereon as shall be stated in the Articles of Incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to the authority expressly vested in it by the provisions of the Articles or Bylaws.

(3) A share certificate issued to the bearer under this section shall not be distributed but shall be retained in the safe custody of the registered agent for the corporation which issued such certificate or in the safe custody of a person authorised by the Minister from time to time as an approved custodian of such bearer share certificates.

(4) The Articles of Incorporation or the resolution providing for the issue of shares adopted by the board of directors may provide that shares of any class or of any series of shares within any class thereof shall be convertible into the shares of one (1) or more other classes of shares or series except into shares of a class or series having rights or preferences as to dividends or distribution of assets upon liquidation which are prior or superior in rank to those of the shares being converted.

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(5) A corporation may provide in its Articles of Incorporation for one (1) or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation at such price or prices, within such period and under such conditions as are stated in the Articles of Incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to the authority expressly vested in it by the provisions of the Articles of Incorporation or Bylaws.

(6) A corporation may issue fractional shares.

(7) Before a corporation shall issue any shares of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, 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 this Ordinance. 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.

**42. Restriction 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.

(2) A restriction imposed pursuant to subsection (1) shall not 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.

(3) A restriction which absolutely prohibits the transfer of shares shall be null and void.

(4) 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.

(5) Any transfer restriction adopted under this section shall be noted on the share certificate, if any, or on any written document evidencing the share transfer, and in the corporation's register of shareholders.

(6) A 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.

(7) An application by a person, who becomes entitled under subsection (6), 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.

#### **43. Subscription for shares.**

(1) A subscription for shares of a corporation to be incorporated shall be irrevocable for a period of six (6) 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 incorporation 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 incorporation of a corporation, shall be paid in full at such time, or in such instalments and at such times, as shall be determined by the board of directors.

(4) A 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 instalment 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 instalments 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 (30) days after written demand has been made therefor.

(7) A written demand under subsection (6) shall be deemed to be made when sent via registered mail addressed to the subscriber at the subscriber's last known address.

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

(9) If a prospective purchaser does not offer 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 authorised but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus.

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

(11) On incorporation of a corporation, an incorporator may subscribe to a minimum of one (1) share of the authorised share capital of the corporation.

#### **44. Consideration for shares.**

(1) Consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labour for services actually received by or performed for the corporation or for its benefit or in its incorporation or reorganisation, 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.

(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 of directors.

(4) Shares without par value may be issued for such consideration, as is fixed from time to time by the board of directors, unless the Articles of Incorporation reserve to the shareholders the right to fix the consideration. 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 authorise the board of directors 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 of directors.

(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.

#### **45. 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 and the name of such subscriber has been entered in the register of shareholders, that 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.

#### **46. Compensation for incorporation, reorganisation and financing.**

The reasonable charges and expenses of incorporation or reorganisation 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.

**47. Determination of stated capital.**

(1) Upon issue by a corporation of shares with a par value not in excess of the authorised 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 authorised shares, the entire consideration received therefor shall constitute stated capital unless the board of directors, within a period of sixty (60) 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 or Bylaws, unless such allocation is authorised by vote of the shareholders.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board of directors transferring all or part of surplus of the corporation to stated capital.

**48. Form and content of certificates.**

(1) A corporation may issue share certificates to its shareholders for any registered shares, and shall record an appropriate entry in its register of shareholders as evidence of the shareholder's ownership of the corporation.

(2) The share certificates shall be represented by certificates signed by at least one (1) director or such other person duly delegated such authority by a director in whom such authority resides, and may be sealed with the seal of the corporation, if any, or a facsimile thereof.

(3) Shares may be issued either in registered form or in bearer form provided that the Articles of Incorporation or Bylaws prescribe the manner in which any required notice is to be given to shareholders of bearer shares, in conformity with section 9 of this Ordinance.

(4) Subject to any limitations in the Articles of Incorporation, registered shares of a corporation incorporated under this Ordinance may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

(5) In the absence of a written instrument of transfer mentioned in subsection (4), the directors may accept such evidence of a transfer of shares as they consider appropriate.

(6) A corporation shall not be required to treat a transferee of a registered share in the corporation as a shareholder until the transferee's name has been entered in the register of shareholders.



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(7) Subject to any limitations in its Articles of Incorporation, a corporation incorporated under this Ordinance shall, on the application of the transferor or transferee of a registered share in the corporation, enter in its register of shareholders the name of the transferee of the share.

(8) A transfer of registered shares of a deceased, incompetent or bankrupt shareholder of a corporation made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a shareholder by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.

(9) Where a corporation issues shares in bearer form, a share certificate shall be issued and signed in accordance with subsection (2) and that share certificate must remain in the custody of the registered agent or other approved custodian.

(10) The transfer of bearer shares shall be by the physical delivery of the certificates.

(11) The Articles of Incorporation may provide that on request of a shareholder, that bearer shares may be exchanged for registered shares or that registered shares may be exchanged for bearer shares.

(12) Each certificate representing shares issued by a corporation which is authorised to issue shares of more than one (1) class, shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorised to be issued and, if the corporation is authorised to issue any class of preferred shares in series, the designation, relative rights, preferences and limitations of each such series so far as the same have been fixed and the authority of the board of directors to designate and fix the relative rights, preferences and limitations of other series.

(13) Each certificate representing shares shall when issued state upon the face thereof:

- (a) that the corporation is incorporated under this Ordinance;
- (b) the name of the person or persons to whom issued if a registered share;
- (c) in the case of the issue of a bearer share, then to be issued in the name of "To Bearer";
- (d) the number and class of shares, and the designation of the series, if any, which such certificate represents;
- (e) the par value of each share represented by such certificate, or a statement that the shares are without par value; and
- (f) 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.

**49. Dividends in cash, shares or other property.**

(1) A corporation may declare and pay dividends in cash, shares 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 incorporated 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.

**50. Share dividends.**

(1) A corporation may make *pro rata* distribution of its authorised 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 of directors, 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) Unrealised 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 authorised by the vote of two-thirds of the shares of each class that might be adversely affected by such a share dividend.

(5) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation, shall not be construed to be a share dividend within the meaning of this section.

**51. Purchase or redemption by corporation of its own shares.**

(1) A corporation, subject to any restrictions contained in its Articles of Incorporation, may purchase its own shares or redeem its redeemable shares out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.

(2) A corporation may purchase its own shares out of stated capital, except when currently the corporation is insolvent or would thereby be made insolvent, if the purchase is made for the purpose of:

- (a) eliminating fractions of shares;
- (b) collecting or compromising indebtedness to the corporation; or
- (c) paying dissenting shareholders entitled to receive payment for their shares under Parts V or XI.

(3) A corporation, subject to any restrictions contained in its Articles of Incorporation, may redeem or purchase its redeemable shares out of stated capital, except when currently the corporation is insolvent or would thereby be made insolvent and except when such redemption or purchase would reduce net assets below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

(4) When its redeemable shares are purchased by a corporation within the period of redeemability, the purchase price thereof shall not exceed the applicable redemption price stated in the Articles of Incorporation. Upon a call for redemption, the amount payable by the corporation for shares having a cumulative preference on dividends may include the stated redemption price, plus accrued dividends to the next dividend date, following the date of redemption of such shares.

**52. Reacquired shares.**

(1) Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be cancelled if they are reacquired out of stated capital, or if they are converted shares, or if the Articles of Incorporation require that such shares be cancelled upon reacquisition.

(2) Any shares reacquired by the corporation and not required to be cancelled may be either retained as treasury shares or cancelled by the board of directors at the time of reacquisition or at any time thereafter.

(3) Neither the retention of reacquired shares as treasury shares, nor their subsequent distribution to shareholders or disposition for a consideration shall change the stated capital.

(4) Treasury shares may be disposed of for such consideration as the directors may fix.

(5) When treasury shares are disposed of for a consideration, the surplus shall be increased by the full amount of the consideration received.

(6) 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.

(7) 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 (6) months of the date of the reduction of capital.

(8) Shares cancelled under this section shall be restored to the status of authorised 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 of directors shall approve and deliver to the Registrar of Corporations, articles of amendment eliminating such shares from the number of authorised shares.

**53. Reduction of stated capital by action of the board of directors.**

(1) Except as otherwise provided in the Articles of Incorporation, the board of directors may at any time reduce the stated capital of a corporation by:

- (a) eliminating from stated capital amounts previously transferred by the board of directors from surplus to stated capital and not allocated to any designated class or series of shares; or
- (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 the consideration for the issue of shares without par value was fixed by the shareholders under this Part, then board of directors shall not reduce the stated capital represented by such shares except to the extent, if any, that the board of directors was authorised 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 fiscal year 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 (6) months of the date of such reduction.

**PART VII – REGISTRATION OF CHARGES****54. Creation of charges.**

(1) Subject to its Articles of Incorporation and Bylaws, a corporation may, by an instrument in writing create a charge.

(2) The governing law of a charge created by a corporation shall be the law of such jurisdiction that may be agreed between the corporation, the chargee and such parties to the charge, and the charge shall be binding on the corporation to the extent, and in accordance with, the requirements of the governing law.

(3) If the corporation and the chargee do not agree on a governing law of the charge, then the governing law of the charge shall be the laws of Saint Christopher and Nevis.

**55. Charges of shares or property.**

(1) A charge shall be an instrument in writing signed by, or with the authority of the shareholder, to which the charge relates and any variation to that charge shall be in writing.

(2) A charge of a bearer share of a corporation is not valid and enforceable unless the certificate for such share is deposited with the authorised approved custodian.

(3) A charge shall clearly indicate:

- (a) the intention to create a charge; and
- (b) the amount secured by the charge; and
- (c) how the interest and fees on such amount is to be calculated.

(4) Where the governing law of a charge is not the laws of Saint Christopher and Nevis:

- (a) the charge shall be in compliance with the requirements of its governing law in order for the charge to be valid, enforceable and binding against the corporation; and
- (b) the remedies which are available pursuant to a charge shall be governed by the governing law, save, the rights between the chargor or chargee as a shareholder of the corporation shall continue to be governed by its Articles of Incorporation, Bylaws and this Ordinance.

(5) Where the governing law of a charge is the law of Saint Christopher and Nevis, then in the event of default by the chargor on the terms of the charge, the chargee is immediately entitled to the following remedies:

- (a) subject to any limitations to the contrary in the terms of the charge, the right to sell or transfer the shares or property; and
- (b) the right to appoint a receiver who, subject to any limitations to the contrary in the terms of the charge, may until such time as the charge is discharged:
  - (i) vote the shares, interest or property;

- (ii) receive distributions in respect of the shares or property; and
- (iii) exercise other rights and powers of the chargor in respect of the shares or property.

(6) The failure of the chargee to exercise or delay in exercising any of its respective rights and remedies under this section shall not operate as a waiver of such right or remedy.

(7) The rights and remedies provided for in this section do not exclude any other rights and remedies provided by law unless expressly prohibited.

(8) Subject to any language to the contrary in the terms of the chargees, all amounts that accrue from the enforcement of the charge shall be applied in the following manner:

- (a) firstly, in meeting the costs incurred in enforcing the charge;
- (b) secondly, in discharging the sums secured by the charge; and
- (c) thirdly, in paying any balance due to the chargor.

#### **56. Registration of charges.**

(1) Where a corporation creates a charge, an application to register the charge may be made to the Registrar of Corporations by the registered agent of that corporation or by another registered agent with the consent of the corporation's registered agent.

(2) If a charge is not drafted in the English language, an authenticated translation of such charge shall also be filed with the application.

(3) An application under subsection (1) shall be filed together with the charge or a certified copy of the charge, along with the prescribed fee for registration of charge.

(4) Upon registration of the charge with the Registrar of Corporations, and its authenticated translation, if applicable, the Registrar of Corporations shall issue a Certificate of Registration of charge which details the date and time that the charge was registered to the applicant and a copy of the Certificate of Registration of Charge shall be sent to the corporation by the applicant, if the applicant is not the registered agent of the corporation.

(5) A Certificate of Registration of Charge is conclusive proof that the requirements of registration have been complied with and the charge was registered on the date and time stated in that certificate.

(6) The date and time evidenced by the receipt of payment of the prescribed fee as delivered to the Registrar shall be deemed by the Registrar to be the date and time of registration for the purposes of this section.

#### **57. Registration of variation of a registered charge.**

(1) Where there is a variation in the terms of a charge which has been registered under section 56, an Application for the Variation of the Registered Charge to be registered in the register of charges may be made to the Registrar of Corporations by the registered agent of that corporation or by another registered agent with the consent of the corporation's registered agent.

(2) If a variation of registered charge is not drafted in the English language, an authenticated translation of such variation of registered charge shall also be filed with the application.

(3) An application under subsection (1) shall be filed together with the variation of the registered charge or a certified copy of the variation, along with the prescribed fee for variation of registered charge.

(4) Upon registration of the variation of registered charge with the Registrar of Corporations, and its authenticated translation, if applicable, a Certificate of Variation of Registered Charge which details the date and time of registration of the variation of registered charge shall be issued to the applicant by the Registrar of Corporations and a copy of the Certificate of Registration of Variation of Registered Charge shall be sent to the corporation by the applicant, if the applicant is not the registered agent of the corporation.

(5) A Certificate of Variation of Registered Charge is conclusive proof that the requirements of registration of the variation of registered charge have been complied with and the variation of registered charge was registered on the date and time stated in the certificate.

(6) The date and time evidenced by the receipt of payment of the prescribed fee as delivered to the Registrar shall be deemed by the Registrar to be the date and time of registration for the purposes of this section.

**58. Registration of satisfaction of a registered charge.**

(1) Where a charge which was registered under section 56 ceases to affect the shares or property of a corporation, the corporation, the chargee or any person who is authorised to act on behalf of the corporation or chargee, may file with the Registrar of Corporations, through the corporation's registered agent, a satisfaction of registered charge which is signed by or on behalf of the chargee and specifies that the corporation's shares or property has ceased to be affected by the charge.

(2) If a satisfaction of registered charge is not drafted in the English language, then an authenticated translation of such satisfaction of registered charge shall also be filed with the application.

(3) Upon registration of the satisfaction of registered charge, and an authenticated translation, if applicable, the Registrar of Corporations shall issue a Certificate of Registration of Satisfaction of Registered Charge to the corporation's registered agent.

(4) The Certificate of Registration of Satisfaction of Registered Charge shall state the date and time that the corporation's shares or property has ceased to be affected by the charge.

(5) Effective as of the date and time stated in the Certificate of Registration of Satisfaction of Registered Charge, the charge is deemed to be no longer registered.

(6) A Certificate of Satisfaction of Registered Charge is conclusive proof that the requirements of the satisfaction of charge have been complied with and the charge was no longer registered as of the date and time stated in the certificate.

**59. Form of application and payment of fees.**

An application made under this Part to register a charge, variation of registered charge or satisfaction of registered charge shall be submitted in a form approved by the Registrar of Corporations and be accompanied by the relevant prescribed fee.

**60. Maintenance by corporation of a register of charges.**

(1) A corporation shall keep a copy of the charge, variation or satisfaction of registered charge created by the corporation at its registered office.

(2) A corporation shall keep a register of all relevant charges created by the corporation outlining in respect of each charge:

- (a) the date of creation of the charge, variation or satisfaction of registered charge as created by the corporation;
- (b) the date on which the property was acquired by the corporation, if the charge is one which relates to existing property acquired by the corporation;
- (c) a short description of the liability secured by the charge;
- (d) a short description of the property charged;
- (e) the name and address of the chargee;
- (f) unless the charge is a security to bearer, the name and address of the holder of the charge; and
- (g) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the corporation to create any future charge ranking in priority to, or equally with the charge.

(3) The corporation shall maintain the register of charges in such form as the directors may approve and which easily allows the corporation to produce legible evidence of its contents.

(4) If either the charge, variation or satisfaction of registered charge, or register of charges is not kept at the corporation's registered office, then the corporation shall notify the Registrar of Corporations of such place of business, where the charge, variation or satisfaction of registered charge or register of charges is kept.

(5) The copy of the charge, variation or satisfaction of registered charge may be maintained in any such data storage form now known or hereinafter invented or adopted, that the directors approve which easily allows the corporation to produce legible evidence of its terms.

(6) The Registrar of Corporations shall be entitled, without charge, to inspect the corporation's register of charges subject to providing reasonable notice to the corporation of his intention to do so.

(7) The copy of the charge, variation or satisfaction of registered charge shall be maintained by the corporation for a period of five (5) years after a Certificate of Registration of Satisfaction of registered charge has been issued.



(8) A corporation that fails to maintain a register of charges in contravention of subsection (2) shall be liable to a penalty fee of Five Thousand Dollars (\$5,000.00) to be imposed by the Registrar of Corporations under this Ordinance.

**61. Execution, acknowledgement and attestation.**

All charges and satisfactions of registered charges for applications for registration with the Registrar of Corporations shall be:

- (a) in a written instrument which shall be executed by the corporation, the chargor, the chargee, or any person who is authorised to act on behalf of the corporation, chargor or chargee; and
- (b) acknowledged before a notary public or any person who is authorised to take acknowledgements according to the laws of the place of execution and the acknowledgement shall be attested to in accordance with section 4.

**62. Register of registered charges.**

(1) The Registrar of Corporations shall maintain a register of charges of all charges, variations or satisfactions of registered charges which have been registered pursuant to sections 56, 57 and 58.

(2) Upon the issuance by the Registrar of Corporations of a certificate, all persons, whether resident or registered in Nevis or anywhere else in the World shall be deemed to have notice of the existence and terms of charges, variations or satisfactions of registered charges.

**63. Priority of registered charges.**

(1) Any charge, variation of registered charge and satisfaction of registered charge of a corporation that is registered in accordance with sections 56, 57 and 58 shall have priority over any charge, variation of registered charge and any satisfaction of registered charge that is subsequently registered in accordance with sections 56, 57 and 58 respectively.

(2) A charge, variation of registered charge and satisfaction of registered charge shall have priority over a charge, variation of registered charge and satisfaction of registered charge that is not registered in accordance with sections 56, 57 and 58 respectively.

(3) Charges, variations of charges and satisfactions of charges which are not registered shall rank among themselves in the order in which they would have been ranked had this Ordinance not come into force.

(4) No charge, variation of charge or satisfaction of charge shall be received into evidence in any legal action before the High Court, unless such charge shall have been duly registered.

**64. Priority of earlier charges.**

(1) Earlier charges may be registered in accordance with section 56 and shall be prioritised in accordance with section 63.

(2) Earlier charges which were not registered in accordance with section 56 shall continue to be prioritised in the order in which they would have been prioritised had this Ordinance not come into force.

**65. Variation of order of priority of charges.**

(1) Notwithstanding sections 63 and 64 the order of priorities of charges shall be subject to:

- (a) an express consent of the chargee that varies the priority of that charge in relation to one (1) or more other charges that it would, but for the consent, have had priority over; or
- (b) any agreement between chargees that affects the priorities in relation to the charges held by the respective chargees.

(2) A registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the corporation to create any future charge ranking in priority to or equally with the charge.

**66. Registration and Records Act.**

Nothing contained in the provisions of the Registration and Records Act, Cap. 23:25 shall preclude the collection of fees by the Registrar of Corporations in relation to charges which are registered under this Ordinance.

**67. Conflict in translations.**

(1) The authenticated translation of a charge, variation of registered charge or satisfaction of registered charge shall be translated by a certified translator to be chosen by and agreed upon by the corporation, the chargee and all other parties to the charge, the variation of registered charge or the satisfaction of registered charge.

(2) In the event of any conflict between:

- (a) a non-English language charge and the authenticated translation of the charge; or
- (b) a non-English language variation of registered charge and the authenticated translation of the variation of the registered charge; or
- (c) a non-English language satisfaction of registered charge and the authenticated translation of the satisfaction,

the authenticated translation of the charge, variation of registered charge or satisfaction of registered charge shall prevail.

**PART VIII – DIRECTORS AND MANAGEMENT**

**68. Management of business of corporation.**

(1) Subject to limitations of the Articles of Incorporation and of this Ordinance as to action which shall be authorised 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.

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(2) The directors may cause the corporation to transfer any of its assets in trust to one (1) or more trustees, to any corporation, company, association, partnership, foundation or similar entity.

(3) The directors may, in accordance with a transfer done under subsection (2), provide that the corporation, its creditors, its shareholders 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.

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

**69. Qualification of directors.**

(1) The Articles of Incorporation or Bylaws may prescribe special qualifications for directors and unless otherwise provided in the Articles of Incorporation or Bylaws, directors may be a person 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.

(3) The management and control of the corporation shall vest in the board of directors and shall be presumed to be in Nevis, if at least one (1) director is resident or registered in Nevis and meetings of the board of directors are regularly convened from Nevis, even though no director may be present in person but only present by any method of instantaneous oral communication, now known or hereinafter invented or adopted.

**70. Number of directors.**

(1) The number of directors may be fixed by the Bylaws, the shareholders, or by action of the board of directors under the specific provisions of the Bylaws, but the number of directors constituting the entire board of directors shall not be less than one (1).

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

- (a) if the board of directors is authorised by the Bylaws to change the number of directors, whether by amending the Bylaws 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 of directors; and
- (b) no decrease shall shorten the term of any incumbent director.

**71. 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 or the Bylaws.

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(2) The Articles of Incorporation may provide for the election of one (1) 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 such director is elected, and until their successor has been elected and qualified.

**72. 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 (2), three (3) or four (4) classes and all classes shall be as nearly equal in number as possible and every class shall include at least one (1) director.

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

- (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 of directors and any newly created directorships are filled by the board of directors, there shall be no classification of the additional directors until the next annual general meeting of shareholders.

**73. Newly created directorships and vacancies.**

(1) Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board of directors for any reason except the removal of directors without cause may be filled by vote of a majority of the directors then in office, although less than a quorum exists, unless the Articles of Incorporation or the Bylaws provide that such newly created directorships or vacancies shall be filled by vote of the shareholders.

(2) Unless the Articles of Incorporation or the specific provisions of a bylaw adopted by the shareholders provide that the board of directors shall fill vacancies occurring in the board of directors by reason of the removal of directors without cause, such vacancies may be filled only by vote of the shareholders.

(3) A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his predecessor.

**74. Removal of directors.**

(1) Any or all of the directors may be removed for cause by vote of the shareholders.

(2) The Articles of Incorporation or the specific provisions of a bylaw may provide for such removal by action of the board of directors, except in the case of any director elected by cumulative voting, or by the holders of the shares of any class or series when so entitled, or by provisions of the Articles of Incorporation.

(3) If the Articles of Incorporation or the Bylaws so provide, any or all of the directors may be removed without cause by vote of the shareholders.

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(4) The removal of directors, with or without cause, as provided in subsections (1) and (2) is subject to the following:

- (a) in the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board of directors, or the entire class of directors of which he is a member, were then being elected; and
- (b) when by the terms of the Articles of Incorporation the holders of the shares of any class or series, or holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series, or the holders of such bonds, voting as a class.

**75. Quorum of the board of directors.**

(1) Unless a greater proportion is required by the Articles of Incorporation, a majority of the entire board of directors present, in person or by proxy, at a meeting duly assembled, shall constitute a quorum for the transaction of business or of any specified item of business, except that the Articles of Incorporation or the Bylaws shall not require unanimity and may fix the quorum at less than a majority of the entire board of directors but not less than one-third thereof.

(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 of directors, unless the Articles of Incorporation require the vote of a greater number.

(3) A proxy shall be given in an instrument in writing by any mechanical, electronic or digital form of communication now known or hereinafter invented or adopted.

(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 of the board of directors or the members of the 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 of directors or any committee.

(5) Unless restricted by the Articles of Incorporation or Bylaws, the board of directors or any committee thereof may participate in a meeting of the board of directors or any committee by means of any methods of instantaneous oral communication now known or hereinafter invented or adopted 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

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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 authorised 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).

(8) This section shall not be applicable in the case where there is one (1) director of a corporation which is subject to this Ordinance.

**76. Meetings of the board of directors.**

(1) Meetings of the board of directors, regular or special, may be held at any place within or outside of Nevis, unless otherwise provided by the Articles of Incorporation or by the Bylaws.

(2) The time and place for holding meetings of the board of directors may be fixed by or under the Bylaws, or if not so fixed, by the board of directors.

(3) Unless otherwise provided by the Bylaws, regular meetings of the board of directors may be held without notice if the time and place of such meetings are fixed by the Bylaws or the board of directors.

(4) Special meetings of the board of directors may be called in the manner provided in the Bylaws and shall be held upon notice to the directors.

(5) The Bylaws may prescribe what shall constitute notice of meeting of the board of directors and a notice or waiver of notice need not specify the purpose of any regular or special meeting of the board of directors, unless required by the Bylaws.

(6) Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice.

(7) Where there is a single director of a corporation, then any requirement in this Ordinance or in the Articles of Incorporation or Bylaws for a meeting of directors for any purpose shall be satisfied where such single director passes a resolution in lieu of such meeting.

**77. Executive committee and other committees.**

(1) If the Articles of Incorporation or the Bylaws so provide, the board of directors may, by resolution adopted by a majority vote of the entire board of directors, designate from among such directors, an executive committee and other committees, each of which to

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the extent provided in the resolution or in the Articles of Incorporation or Bylaws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority as to the following matters:

- (a) the submission to shareholders of any action that requires shareholders' authorisation under this Ordinance;
- (b) the filling of vacancies in the board of directors or in a committee;
- (c) the fixing of compensation of the directors for serving on the board of directors or on any committee;
- (d) the amendment or repeal of the Bylaws, or the adoption of new Bylaws; and
- (e) the amendment or repeal of any resolution of the board of directors which by its terms shall not be so amendable or repealable.

(2) Each such committee shall serve at the pleasure of the board of directors and the designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under this Part.

**78. Directors' conflicts of interest.**

(1) No contract or other transaction between a corporation and one (1) or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one (1) or more of its directors are directors or officers who have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board of directors, or of a committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose:

- (a) 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 board of directors or committee, and the board of directors or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director or, if the votes of the disinterested directors are insufficient to constitute an act of the board of directors as defined in this Part, by unanimous vote of the disinterested directors; or
- (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 of directors or of a committee which approves such contract or transaction.

(3) The Articles of Incorporation or Bylaws 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 of directors shall have authority to fix the compensation of directors for service in any capacity.

**79. Loan to directors.**

(1) A corporation shall not make a loan to a director unless it is authorised by majority vote of the shareholders.

(2) For the purpose of granting a loan to a director under subsection (1), the shares of the director to whom the loan is to be made shall not be shares entitled to vote.

(3) 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.

**80. 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 legal action whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person 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, trustee or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such legal action if:

- (a) 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
- (b) with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) The termination of any legal action 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 conduct was unlawful.

(3) A corporation shall not indemnify a person under subsection (1) 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 duty to the corporation, unless and only to the extent that the court in which such legal action 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 defence of any legal action referred to in subsection (1), or in the defence 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 legal action may be paid in advance of the final disposition of such legal action as authorised 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 authorised 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.

#### **81. 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 an ordinarily prudent man 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 managing director or officer of the corporation having charge of its books and records, 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.

#### **82. Officers.**

(1) A corporation shall have such officers as required by its Articles of Incorporation or Bylaws or as the board of directors determines are necessary to transact the business of the corporation and such officers may also be directors and may be either natural or legal persons.

(2) The Articles of Incorporation may provide that all officers or that specified officers shall be elected by the shareholders instead of by the board of directors.

(3) 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 of directors 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 or until their successors shall be elected and qualify.

(4) An 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.

(5) Any two (2) or more offices may be held by the same person unless the Articles of Incorporation or Bylaws provide otherwise.

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

(7) 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 of directors.

(8) Officers may be of any nationality and need not be residents of, or registered in Nevis.

**83. Removal of officers.**

(1) An officer elected or appointed by the board of directors may be removed by the board of directors with or without cause, except as otherwise provided in the Articles of Incorporation or the Bylaws.

(2) 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 of directors for cause.

(3) The removal of an officer without cause shall be without prejudice to his contract rights, if any.

(4) The election or appointment of an officer shall not of itself create contract rights.

**PART IX - SHAREHOLDERS****84. Meetings of shareholders.**

(1) Meetings of shareholders may be held at such place, either within or outside of Nevis, as may be designated in the Bylaws.

(2) A corporation, subject to its Articles of Incorporation or Bylaws, may by unanimous resolution of the shareholders, elect to dispense with the holding of an annual general meeting.

(3) Except as otherwise provided for, an annual general meeting of shareholders shall be held for the election of directors on a date and time designated by or in a manner provided for in the Bylaws. Any other proper business may be transacted at an annual general meeting.

(4) A failure to hold the annual general meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or cause a dissolution of the corporation, except as may be otherwise specifically provided in this Ordinance.

(5) If the annual general meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient.

(6) If there is a failure to hold the annual general meeting for a period of ninety (90) days after the date designated therefor, or if no date has been designated for a period of

thirteen (13) months after the organisation of the corporation or after its last annual general meeting, holders of not less than ten percent (10%) of the shares entitled to vote in an election of directors may, in writing, demand the call of a special meeting specifying the time thereof, which shall not be less than two (2) nor more than three (3) months from the date of such call.

(7) The officer of the corporation who has been duly appointed to perform the functions of secretary of the corporation upon receiving the written demand under subsection (6), shall promptly give notice of such meeting, or if he fails to do so within five (5) business days thereafter, any shareholder signing such demand may give such notice.

(8) Special meetings of the shareholders may be called by the board of directors or by such person or persons as may be authorised by the Articles of Incorporation or by the Bylaws.

(9) Where there is a single shareholder of a corporation, then any requirement in this Ordinance or in the Articles of Incorporation or Bylaws for a meeting of shareholders for any purpose shall be satisfied where such single shareholder passes a resolution in writing in lieu of such meeting.

(10) The Articles of Incorporation or the Bylaws may provide that elections of directors shall be by written ballot.

#### **85. Notice of meetings of shareholders.**

(1) Where, under the provisions of this Ordinance, shareholders are required or permitted to take any action at a meeting, written notice to them shall state the place, date and hour of the meeting and, unless it is the annual general meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting and any notice of a special meeting shall also state the purpose for which the meeting is called.

(2) A copy of the notice of any meeting shall be given personally or sent not less than fifteen (15) nor more than sixty (60) days before the date of the meeting, via any mechanical, electronic or digital form of communication now known or hereinafter invented or adopted which will provide proof of the delivery and receipt of such communication, to each registered shareholder entitled to vote at such meeting.

(3) If a notice issued under subsection (2) is mailed, such notice is given when deposited in the mail directed to the shareholder at his address as it appears on the register of shareholders, or, if he shall have filed with the corporation a written request that notices to him be mailed to some other address, then directed to him at such address.

(4) Notice of any meeting shall be given to shareholders of bearer shares in accordance with the provisions of the Articles of Incorporation, or the Bylaws, or this Ordinance and the notice shall include a statement of the conditions under which shareholders may attend the meeting and exercise the right to vote.

(5) Where a meeting is adjourned to another time or place, it shall not be necessary, unless the meeting was adjourned for lack of a quorum or unless the Bylaws require 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.

(6) At the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting but, if after the adjournment the board of directors fixes a new record date for the adjourned meeting, then a notice of the adjourned meeting shall be given to each shareholder on the new record date entitled to notice under subsection (1).

**86. Waiver of notice.**

(1) A shareholder who submits a signed waiver of notice in person or by proxy shall not be entitled to receive notice whether before or after a meeting.

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

**87. 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) The written consent of the shareholders under subsection (1) shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any instruments which are filed with the Registrar of Corporations under this Ordinance.

**88. Fixing a record date.**

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 of directors may fix, in advance a date as the record date for any such determination of shareholders. Such date shall not be more than sixty (60) nor less than fifteen (15) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

**89. Proxies.**

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

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

(3) A proxy shall not be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided in the proxy.

(4) A shareholder who issues a proxy may revoke that proxy at any time, except as otherwise provided in this section.

(5) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority

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is exercised, written notice of an adjudication of such incompetence or of such death is received by the officer responsible for maintaining the register of shareholders.

(6) Except when other provisions are made by written agreement between the parties, the record holder of shares which are held by a pledgee as security or which belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to the pledgee or to such owner of such shares, a proxy to vote or take other action thereon.

(7) A shareholder shall not sell his vote, or issue a proxy to vote to any person for any sum of money or anything of value, except as authorised in this section.

(8) A proxy which is entitled “*irrevocable proxy*” and which states that it is irrevocable, is irrevocable if and as long as it is coupled with an interest sufficient to support an irrevocable power, including when it is held by any of the following or a nominee of any of the following:

- (a) a pledgee;
- (b) a person who has purchased or agreed to purchase the shares;
- (c) a creditor of the corporation who extends or continues credit to the corporation in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit; and
- (d) a person who is contracted to perform service as an officer of the corporation, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for.

(9) Notwithstanding any conditions in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the corporation is paid, or the period of employment provided for in the contract of employment has terminated, and becomes revocable, in a case provided for in subsection (8) (c) and (d), at the end of the period, if any, specified therein as the period during which it is irrevocable, or three (3) years after the date of the proxy, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a proxy under subsections (3), (4) and (5) hereof.

(10) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision, unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

**90. Quorum of shareholders.**

(1) Unless otherwise provided in the Articles of Incorporation, a majority of shareholders 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 organise 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.

**91. 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 (2) or more of them, as he may see fit and this right, when exercised, shall be termed cumulative voting.

(3) 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 authorised by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

**92. Greater requirement as to quorum 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
- (b) that the proportion of votes of the holders of shares, or of the holders of shares of any class or series thereof, that shall be necessary at any meeting of shareholders 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.

(2) An amendment of the Articles of Incorporation which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorised 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 this section.

(3) If the Articles of Incorporation of any corporation contain a provision authorised by this section, the existence of such provision shall be noted on the face or back of every certificate for shares issued by such corporation.

### **93. Register of shareholders at meetings.**

(1) A register of registered shareholders as of the record date, and of holders of bearer shares who as of the record date have qualified for voting, certified by the officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of shareholders upon request of any shareholder at the meeting or prior thereto.

(2) If the right to vote at any meeting is challenged, the inspector of election, or person presiding thereat, shall require such register of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such register to be shareholders entitled to vote thereat may vote at such meeting.

### **94. Qualification of voters.**

(1) Every registered shareholder as of the record date and every holder of bearer shares who, as of the record date, has qualified for voting, shall be entitled at every meeting of shareholders to one (1) vote for every share standing in their name, unless otherwise provided in the Articles of Incorporation.

(2) Treasury shares are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

(3) Shares of a parent corporation held by a subsidiary corporation are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

(4) Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him, either in person or by proxy, without transfer of such shares into his name.

(5) Shares held by a trustee may be voted by him, either in person or by proxy, only after the shares have been transferred into his name as trustee or into the name of his nominee.

(6) Shares by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority to act is contained in an order of the court by which such receiver was appointed.

(7) 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.

(8) 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.

(9) 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 directors of such other corporation may determine.

(10) The Articles of Incorporation may provide, except as limited by section 36, 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 authorise any action by the shareholders.

#### **95. Voting trusts.**

(1) A 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 (10) years upon the terms and conditions stated therein.

(2) The certificates for shares transferred in accordance with subsection (1) 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 and at the termination of the agreement, the shares surrendered shall be reissued to the owner in accordance with the terms of the trust agreement.

(3) 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 relating to the trust, and a register 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.

(4) The register required under subsection (3) may be kept and stored in any mechanical, electronic or digital storage method, now known or hereinafter invented or adopted and must be capable of being converted into written form within a reasonable time.

(5) 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 X of this Ordinance. The shareholder or holder of a voting trust certificate shall be entitled to the remedies provided in Part X of this Ordinance.

(6) At any time within six (6) months before the expiration of such voting trust agreement as originally fixed or as extended one (1) or more times under this section, one (1) or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or a substitute trustee, for an additional period not exceeding ten (10) years.



(7) An extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all provisions of this Part applicable to the original voting trust agreement.

**96. Agreement among shareholders as to voting.**

An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

**97. Conduct of shareholders' meetings.**

(1) Unless otherwise provided in the Bylaws, the board of directors, in advance of any shareholders' meeting, may appoint one (1) or more inspectors to act at the meeting or any adjournment thereof.

(2) If inspectors are not so appointed under subsection (1), the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote at that meeting, appoint one (1) or more inspectors.

(3) Where a person appointed fails to appear or act, the vacancy may be filled by appointment made by the board of directors in advance of the meeting or at the meeting by the person presiding thereat.

(4) An inspector, before entering upon the discharge of his duties, shall take an oath faithfully to execute the duties of inspector at such meetings.

(5) Unless otherwise provided in the Bylaws, the inspectors shall carry out the following functions:

- (a) determine the number of shares outstanding and the voting power of each share represented at the meeting;
- (b) ascertain the existence of a quorum at the meeting;
- (c) assess the validity and effect of proxies;
- (d) receive votes, ballots, or consents;
- (e) count and tabulate all votes, ballots or consents;
- (f) hear and determine all challenges and questions arising in connection with the right to vote;
- (g) determine the results, and do such acts as are proper to conduct the election or vote with fairness to all shareholders entitled to vote.

(6) Unless waived by vote of the shareholders, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a sworn certificate of any fact found by them.

(7) A report or certificate made by the inspectors under subsection (6) shall be prima facie evidence of the facts stated and of the vote as certified by them.

**98. 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 paragraph (a); 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 section, 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 of directors, 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 favorable 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 88.

(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 authorisation 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 authorised in the original Articles of Incorporation and are issued, sold or optioned within two (2) years from the date of filing such Articles.

(4) The holders of shares entitled to the preemptive right shall be given prompt notice either personally or by mail at least fifteen (15) days prior to the expiration of the period during which the right may be exercised, and that notice shall set forth the period within which and the terms and conditions upon which such shareholders may exercise their preemptive right.

**99. Guarantee authorised by shareholders.**

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

**100. Shareholders' derivative actions.**

(1) An action may be brought in the right of a corporation to procure a judgment in its favour, by a holder of shares or holder of voting trust certificates of the corporation or holder of a beneficial interest in such shares or certificates.

(2) In any such action, it shall be made to appear that the plaintiff is such a holder at the time of bringing the action and that he was such a holder at the time of the transaction of which he complains, or that his shares or his interest therein devolved upon him by operation of law.

(3) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board of directors or the reasons for not making such effort.

(4) Such action shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action.

(5) If the court shall determine that the interests of the shareholders or any class thereof will be substantially affected by such discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the shareholders or class thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one (1) or more of the parties to the action shall bear the expense of giving such notice, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(6) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or claimant as a result of a judgment, compromise or settlement of the action or claim, the court may award the plaintiff or claimant reasonable expenses, including reasonable attorneys' fees, and shall direct him to account to the corporation for the remainder of the proceeds so received by him.

(7) In any action authorised by this section, if the plaintiff holds less than five percent (5%) of any class of the outstanding shares or holds voting trust certificates or a beneficial interest in shares representing less than five percent (5%) of any class of such shares, then unless the shares, voting trust certificates or beneficial interest of such plaintiff has a fair value in excess of One Hundred and Thirty Five Thousand dollars (\$135,000.00) or Fifty Thousand Dollars United States Currency (US \$50,000)), the corporation in whose right such action is brought shall be entitled at any stage of the legal action before final judgment to require the plaintiff to give security for the reasonable expenses, including

attorneys' fees, which may be incurred by it in connection with such action, in such amount as the court having jurisdiction of such action shall determine upon the termination of such action.

(8) The amount of such security which may be required to be given by the plaintiff under subsection (7) may from time to time be increased or decreased in the discretion of the court having jurisdiction of such action, upon showing that the security provided has or may become inadequate or excessive.

### **PART X - CORPORATE RECORDS AND REPORTS**

#### **101. Requirement for keeping books and records, minutes and register of shareholders.**

(1) A corporation incorporated under this Ordinance shall keep correct and complete books and records 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 committees, if any.

(2) A corporation incorporated under this Ordinance shall keep a register of shareholders, which contains 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) A 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, resolutions, registers and records may be kept or stored in any mechanical, electronic or digital storage method now known or hereinafter invented or adopted or in any other form capable of being converted into written form within a reasonable time.

#### **102. Evidence of beneficial owners of bearer shares.**

(1) A registered agent and any other person who may from time to time be authorised by the Minister to act as an authorised custodian of bearer share certificates, shall keep each bearer share certificate and maintain a record of each such certificate issued by any corporation for which it acts as registered agent or such corporation for which it has been approved as an authorised custodian, and such record shall contain the following information:

- (a) the name of the corporation 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; and
- (d) the identity of the owner of the shares contained in the bearer share certificate, including, the name, address, date of birth, nationality and such other details of identification as may from time to time be prescribed by the Minister.

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(2) Where the 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.

(3) The registered agent shall, where custody of the bearer share certificate is transferred to another registered agent, notify the Registrar within seven (7) days of such transfer and such notice shall include the particulars of the new registered agent.

(4) 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 (\$30,000) or revocation of the registered agent's licence or to both.

(5) The Director or Regulator of Financial Services in Nevis shall have power under the preceding section to levy fines against Registered Agents who are in default and/or recommend the suspension or revocation of their licences, provided that:

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

(6) The preceding provisions shall apply to any other person who may from time to time be authorised to act as a custodian of bearer shares.

**103. Books and records of corporations.**

(1) Subject to section 101 (1), a corporation shall keep proper books and records including where applicable, material underlying documentation including contracts and invoices and should reflect details of:

- (a) all sums of money received and expended by the corporation, and the matters in respect of which the receipt and expenditure takes place; and
- (b) all sales and purchases and other transactions and the assets and liabilities of the corporation.

(2) The books and records should:

- (a) correctly explain all transactions;
- (b) enable the financial position of the corporation to be determined with reasonable accuracy at any time; and
- (c) allow financial statements to be prepared.

(3) The books and records which a corporation is required to keep shall be preserved by it for a minimum period of five (5) years from the date on which they are prepared.

(4) The books and records of a corporation shall be kept at the registered office of the corporation or at such other place or places as the directors think fit.

**104. Shareholders' right to inspect books and records.**

(1) A 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 register of shareholders, books and records, and minutes of all proceedings.

(2) An inspection authorised by subsection (1) may be denied to a shareholder or other person, who within five (5) years, sold or offered for sale a register of shareholders of a corporation or aided or abetted any person in procuring for sale any such register 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 is a fundamental right and may not be limited in the corporation's Articles of Incorporation or its Bylaws.

**105. Directors' right of inspection.**

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

(2) An 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.

**106. Enforcement of right of inspection.**

(1) Upon refusal of a lawful demand for inspection of books and records required to be maintained under this Ordinance, the person making the demand may apply to the High Court for an order directing the corporation to show cause why an order should not be granted permitting such inspection by the applicant.

(2) Upon the return day of the order to show cause, the High Court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the High Court shall grant an order compelling such inspection and awarding such further relief as the High Court may deem just and proper.

(3) On order of the High Court issued under this section, all officers and agents of the corporation shall produce such records ordered to be produced in their custody or power, under penalty of punishment for contempt of court.

(4) All expenses incurred as a result of the production of records in accordance with subsection (3) shall be defrayed by the applicant, unless the High Court orders them to be paid or shared by the corporation.

**107. Annual and interim reports.**

(1) Upon the written request of any person who shall have been a shareholder of record for at least six (6) months immediately preceding his request, or of any person holding, or authorised in writing by the holders of at least five percent (5%) of any class of the outstanding shares, the corporation shall deliver to such shareholder via any methods of transmitting written communication now known or hereinafter invented or adopted, which will provide proof of the delivery and receipt of such communication, an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement.

(2) The corporation, upon receiving a written request in accordance with subsection (1), shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss statement.

**PART XI - CONVERSION, MERGER OR CONSOLIDATION****108. Conversion of a limited liability company to a corporation.**

(1) A plan of conversion must set forth the terms and conditions of the conversion of the interests of the members of the limited liability company into shares in the corporation, or the cash or other consideration to be paid or delivered as a result of the conversion.

(2) The terms and conditions of a conversion of a limited liability company to a corporation must be approved by the limited liability company in the manner required by the Nevis Limited Liability Company Ordinance 2017, its Articles of Organisation or Operating Agreement.

(3) After the plan is approved in accordance with subsection (2), the limited liability company shall file Articles of Incorporation by conversion with the Registrar of Corporations in the manner set forth in Part IV and in addition to the requirements of Part IV, the Articles of Incorporation shall include:

- (a) the name of the limited liability company from which the corporation was converted; and
- (b) a statement that all requirements of the Nevis Limited Liability Company Ordinance 2017 and of this Ordinance have been satisfied.

(4) The filing of the Articles of Incorporation by conversion cancels the Certificate of Formation as of the effective date of the Articles of Incorporation by conversion.

(5) A person who has personal liability for debts and obligations of the limited liability company which was converted to the corporation, remains liable for debts and obligations incurred by the limited liability company before the effective date of the incorporation of the converted corporation, to the same extent as he would be liable, had there not been a conversion.

(6) A person's liability for debts and obligations of the corporation incurred on or after the effective date of the incorporation of the converted corporation is that of a shareholder of a corporation as provided in this Ordinance.

**109. Effect of conversion.**

(1) A corporation that has been converted pursuant to this Part is for the purposes of this section the same entity that existed before the conversion.

(2) When a conversion takes effect:

- (a) all property owned by the converting limited liability company is vested in the corporation without further act or deed. If deeds or other documents evidencing ownership or title must be filed in any jurisdiction, such documents shall be filed only to give notice that the name and form of owner of such property has been changed, and not to evidence or record a change of owner or title holder;
- (b) all debts, liabilities and other obligations of the converting limited liability company continue as obligations of the corporation;
- (c) a legal action pending by or against the converting limited liability company may be continued as if the conversion had not occurred, except that, if appropriate in the jurisdiction in which the proceeding is pending, the caption of the action may be changed to reflect the conversion;
- (d) notwithstanding any other law, all the rights, privileges, immunities, powers and purposes of the converting limited liability company are vested in the corporation; and
- (e) except as otherwise provided in the plan of conversion, all of the members of the converting limited liability company continue as shareholders of the corporation.

**110. Merger or consolidation of domestic corporations.**

(1) Two (2) or more domestic corporations may merge or consolidate as provided in this Part.

(2) The board of directors 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 incorporated; 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;



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- (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, a statement of any amendment in the Articles of Incorporation of the surviving corporation to be effected by such merger;
- (e) in case of consolidation, all statements required to be included in Articles of Incorporation for a corporation incorporated under this Ordinance, except statements as to facts not available at the time the plan of consolidation is approved by the board of directors; and
- (f) such other provisions with respect to the proposed merger or consolidation as the board of directors considers necessary or desirable.

(3) The board of directors 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; and
- (b) the plan of merger or consolidation shall be authorised 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. 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 of directors and shareholders of each constituent corporation, the Articles of Merger or Articles of Consolidation shall be executed in duplicate, on behalf of each corporation that is a party to the merger or consolidation, by at least one (1) director or such other person duly delegated such authority by a director in whom such authority resides, and shall set forth:

- (a) the plan of merger or consolidation that had been duly approved as set forth herein;
- (b) the date the Articles of Incorporation of each constituent corporation were filed with the Registrar of Corporations;
- (c) the manner in which the merger or consolidation was authorised with respect to each constituent corporation; and

- (d) in case a domestic corporation is the surviving or consolidated corporation, any statement required to be included in Articles of Incorporation for a corporation incorporated under this Ordinance.

(5) The Articles of Merger or Articles of Consolidation shall be filed with the Registrar of Corporations in accordance with the provisions of section 4.

#### **111. Merger of subsidiary corporations.**

(1) A domestic corporation owning at least ninety percent (90%) of the outstanding shares of each class of another domestic corporation or corporations may merge such other corporation or corporations into itself without the authorisation of the shareholders of any such corporation. Its board of directors 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 incorporated;
- (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 of directors considers necessary or desirable.

(2) A copy of such plan of merger or an outline of the material features thereof shall be delivered via any methods of delivering written communication, now known or hereinafter invented or adopted, which will provide proof of delivery and receipt of such communication, 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.

(3) The surviving corporation shall deliver duplicate originals of the Articles of Merger to the Registrar of Corporations. The Articles of Merger 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 Corporations; 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.

(4) The Articles of Merger shall be filed with the Registrar of Corporations in accordance with the provisions of section 4.

**112. Effect of merger or consolidation.**

(1) The merger or consolidation shall be effective upon the filing of the Articles of Merger or Articles of Consolidation with the Registrar of Corporations or on such date subsequent thereto, not to exceed thirty (30) days, as shall be set forth in such articles of merger or articles of consolidation.

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

- (a) a surviving or consolidated corporation shall thereafter, consistent 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 constituent corporation;
- (b) all the property, real and personal, including subscriptions to shares, causes of action and every other asset of each constituent corporation 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 constituent corporation;
- (d) no liability or obligation due or to become due, claim or demand for any cause existing against any such constituent corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger or consolidation.
- (e) no legal action 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;
- (g) in the case of a consolidation, the statements 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 incorporated under this Ordinance, shall be its Articles of Incorporation; and
- (h) unless otherwise provided in the Articles of Merger or Articles of Consolidation, a constituent corporation which is not the surviving corporation or the consolidated corporation, ceases to exist and is dissolved.

**113. Merger or consolidation of domestic and foreign corporations.**

(1) One (1) or more foreign corporations may be merged or consolidated with one (1) 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 organised;
- (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 Corporations:
  - (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; and
  - (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 this Ordinance.

(3) If the surviving or consolidated corporation is to be governed by the laws of a 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 foreign jurisdiction shall be determined by the filing requirements and laws of such foreign jurisdiction.

(5) The procedure for the merger of a subsidiary corporation or corporation under section 107 shall be available where either a subsidiary corporation or the corporation owning at least ninety percent (90%) 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.

#### **114. 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 authorised 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 the meeting shall be given to each shareholder, whether or not entitled to vote; and
- (c) at such meeting the shareholders may authorise such sale, lease, exchange or other disposition and may fix or may authorise the board of directors to

fix any or all terms and conditions thereof and the consideration to be received by the corporation therefor.

(2) An authorisation under subsection (1) (c) 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 authorisation 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 authorise 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 authorise such action by the board of directors under subsection (3).

**115. Right of dissenting shareholders to receive payment for shares.**

A 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) a plan of merger or consolidation to which the corporation is a party; or
- (b) a 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 (1) year after the date of sale.

**116. Procedure to enforce shareholders' right to receive payment for shares.**

(1) A shareholder intending to enforce his rights under section 39 to receive payment for his shares if the proposed corporate action referred to therein is taken, shall file with the corporation, written objection to the action before the meeting of shareholders at which the action is to be submitted to a vote, or at such meeting but before the vote, file written objection to the action.

(2) The objection by a shareholder under subsection (1) 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 authorised by written consent of shareholders without a meeting.

(4) Within twenty (20) days after the shareholders' authorisation date, which term as used in this section means the date on which the shareholders' vote authorising such action 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 authorisation

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or consent by any method of delivering written communication, now known or hereinafter invented or adopted, which will provide proof of the delivery and receipt of such communication, 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 (20) days after the giving of notice to him, 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 name and residential address, the number and classes of shares as to which he dissents, and a demand for payment of the fair value of his shares.

(6) A shareholder who elects to dissent from a merger under section 115 shall file a written notice of such election to dissent within twenty (20) days after the giving to him of a copy of the plan or merger, or an outline of the material features thereof under.

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

(8) 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.

(9) Within seven (7) days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven (7) 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 and send by any method of delivering written communication, now known or hereinafter invented or adopted, which will provide proof of the delivery and receipt of such communication, to each shareholder who has filed such notice of election to pay for his shares at a specified price, which the corporation considers to be their fair value.

(10) If within thirty (30) days after the making of an offer under subsection (9), the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within thirty (30) days after the making of such offer upon the surrender of the certificates representing such shares.

(11) The following procedures shall apply if the corporation fails to make an offer within the period of seven (7) days, or if it makes the offer and any dissenting shareholder fails to agree with it within the period of thirty (30) days thereafter upon the price to be paid for shares owned by such shareholder:

- (a) the corporation shall, within twenty (20) days after the expiration of whichever is applicable of the two (2) 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. If, in the case of merger or consolidation the surviving or consolidated corporation is not registered under this Ordinance, such legal action shall be brought in the appropriate court in such foreign domicile where the corporation is registered;

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- (b) if the corporation fails to institute legal action within such period of twenty (20) days, any dissenting shareholder may institute legal action for the same purpose not later than thirty (30) days after the expiration of such twenty (20) day period. If legal action is not instituted within the thirty (30) day period, all dissenters' rights shall be lost unless the court, for good cause shown, shall otherwise direct;
- (c) all dissenting shareholders, except those who have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such legal action, which shall have the effect of an action *quasi in rem* against their shares. The corporation shall serve a copy of the petition in such legal action 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 shares. If the corporation does not request any such determination 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' authorisation date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal. The court may appoint an appraiser to receive evidence and recommend a decision on the question of fair value; and
- (e) the final order in the proceeding shall be entered against the corporation in favour of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined. Within sixty (60) days after the final determination of the proceeding, the corporation shall pay each dissenting shareholder the amount found to be due him, upon surrender of the certificates representing his shares.

(12) 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.

(13) The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein, shall exclude the enforcement by such shareholder of any right to which he 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.

## **PART XII - DISSOLUTION**

### **117. 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) When all the shareholders entitled to vote on a proposal to dissolve shall consent in writing to a dissolution, then no meeting of shareholders shall be necessary.

(3) Articles of Dissolution shall be filed with the Registrar of Corporations in accordance with the provisions of section 4.

(4) The Articles of Dissolution shall be signed and delivered to the Registrar of Corporations and shall set forth:

- (a) the name of the corporation;
- (b) the date its Articles of Incorporation were filed with the Registrar of Corporations and date of filing of amendments, if any;
- (c) that the corporation elects to dissolve and the reason for such dissolution; and
- (d) the manner in which the dissolution was authorised.

#### **118. Judicial dissolution.**

(1) A shareholders' meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified under subsection (2) may be called, notwithstanding any provision in the Articles of Incorporation, by the holders of ten percent (10%) of all outstanding shares entitled to vote thereon, or if the Articles of Incorporation authorise 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 (12) consecutive months. 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 (1) 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 of directors 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 (2) or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders;
- (d) that the acts of the directors are illegal, oppressive or fraudulent; and
- (e) that the corporate assets are being misapplied or wasted.

(3) If it appears, following due notice to all interested persons and hearing that any of the foregoing grounds for dissolution of the corporation exists, the High Court shall make a judgment that the corporation shall be dissolved.



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(4) The registrar of the High Court shall transmit certified copies of the judgment to the Registrar of Corporations and upon filing with the Registrar of Corporations, the corporation shall be dissolved.

(5) A shareholder of a corporation who complains that the affairs of the corporation are being conducted in a manner oppressive to some part of the shareholders (including himself), may make an application to the High Court by petition for an order under this section.

(6) If on any such application by a shareholder under subsection (5) the High Court is of the opinion:

- (a) that the corporation's affairs are being conducted as aforesaid; and
- (b) that to dissolve the corporation would unfairly prejudice that part of the shareholders, but otherwise the facts would justify the making of a dissolution order on the ground that it was just and equitable that the corporation should be dissolved;

then the High Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, including but not limited to an order regulating the conduct of the corporation's affairs in the future, or for the purchase of the shares of any shareholders of the corporation by other shareholders of the corporation or by the corporation and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital, or otherwise.

(7) Where an order under this section makes any alteration in or addition to any corporation's Articles of Incorporation, then, notwithstanding anything in any other provision of this Ordinance but subject to the provisions of the order, the corporation concerned shall not have power without leave of the High Court to make any further alteration in or addition to the Articles of Incorporation with the provision of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the corporation and the provisions of this Ordinance shall apply to the Articles of Incorporation as so altered or added to accordingly.

(8) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a corporation's Articles of Incorporation shall, within fourteen (14) days after the making thereof, be delivered by the corporation to the Registrar of Corporations for registration.

(9) If a corporation makes default in complying with this subsection, the corporation and every director or officer of the corporation who is in default shall be liable to a fine to be prescribed by the Minister in Regulations.

(10) For the avoidance of doubt, the provisions will also be applicable to former shareholders whose shareholding has been redeemed at the behest of a majority shareholder where at the time such actions were not in the best interests of those whose shares were so redeemed.

**119. Dissolution on failure to pay annual registration fee or maintain a registered agent and removal from register.**

(1) On the failure of a corporation to pay the annual renewal of registration fee for a period of one (1) year, the Registrar of Corporations shall remove the corporation from the register of corporations.

(2) On the failure of a corporation to maintain a registered agent for a period of sixty (60) days, the Registrar of Corporations shall remove the corporation from the register of corporations.

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

(4) A corporation which is removed from the register pursuant to subsections (1) and (2) may be restored to the register within three (3) years of the date of removal upon filing an Application for Restoration with the Registrar of Corporations in the prescribed form, together with the prescribed fee for restoration and all outstanding fees and penalties accrued as at the date of the application.

(5) A corporation removed from the register pursuant to subsection (3) 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. In such a case, the provisions of subsection (9) shall not apply to that corporation with respect to the payment of the fee for restoration.

(6) Where a corporation has been removed from the register of corporations for over three (3) years, the Registrar of Corporations may in his discretion, restore a corporation to the register of corporations at any time upon an application made by the corporation for restoration on the prescribed form and upon payment to Registrar of Corporations of the prescribed fees.

(7) A corporation making an Application for Restoration under this section shall submit to the Registrar of Corporations 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 of corporations.

(8) The Registrar shall, after removing any corporation from the register pursuant to subsection (3), give notice of removal in writing to the registered agent of the corporation specifying the allegations of criminal activity of which the corporation is accused and the corporation shall be given a period of fourteen (14) days to respond to the notice. If the corporation has no registered agent, then such notice shall be sent to the last known registered agent of the corporation.

(9) A corporation shall be restored to the register of corporations retroactive to the date of its removal and shall pay a fee for restoration to the register of corporations.

**120. Winding up after dissolution.**

(1) A corporation, whether it expires by its own limitations or is otherwise dissolved, shall nevertheless be continued for the term of three (3) years from such expiration or dissolution as a body corporate for the purposes of:

- (a) prosecuting and defending legal actions by or against it;
- (b) enabling it gradually to settle and close its business and affairs;
- (c) disposing of and conveying its property;
- (d) discharging its liabilities; and
- (e) distributing to the shareholders any remaining assets,

but not for the purpose of continuing the business and affairs for which the corporation was incorporated.

(2) With respect to any legal action begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such legal action and until any judgment, order, or decree therein shall be fully executed.

(3) Upon the dissolution of any corporation, or upon the expiration of the period of its corporate existence, the directors shall be trustees thereof, with full power to:

- (a) settle the business and affairs of the corporation;
- (b) collect the outstanding debts of the corporation;
- (c) sell and convey the property, real and personal, as may be required by the laws of the jurisdiction where the property is situated;
- (d) prosecute and defend all legal action as may be necessary or proper for the purposes mentioned in paragraphs (a) to (c) above;
- (e) distribute the money and other property among the shareholders after paying or adequately providing for payment of its liabilities and obligations; and
- (f) do all other acts which might be done by the corporation, before dissolution, that may be necessary for the final settlement of the unfinished business and affairs of the corporation.

(4) At any time within three (3) years after the filing of the Articles of Dissolution, the High Court, in a special proceeding instituted under this section, upon the petition of the corporation, or of a creditor, claimant, director, officer, shareholder, subscriber for shares, or incorporator or any other person in interest, may continue the dissolution of the corporation under the supervision of the High Court and may make all such orders as it may deem proper in all matters in connection with the dissolution or in the winding up of the business and affairs of the corporation, including the appointment or removal of a receiver, who may be a director, officer or shareholder of the corporation.

**121. Settlement of claims against corporation.**

(1) Any time within one (1) year after dissolution, a corporation may give notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six (6) months after the first publication of such notice.

(2) A notice under subsection (1) shall be published at least once a week for four (4) successive weeks in a newspaper of general circulation in the jurisdiction in which the corporation conducted its business at the date of dissolution, or in a newspaper of general circulation in Nevis.

(3) On or before the date of the first publication of notice under subsection (2), the corporation shall deliver a copy thereof, via any method of delivering written communication now known or hereinafter invented or adopted which will provide proof of delivery and receipt of such communication to the last known address of each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation.

(4) The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid or operate as a recognition of the validity of, or a waiver of any defence or counterclaim in respect of any claim against the corporation, its assets, directors, officers or shareholders, which has been barred by any statute of limitation or which has become invalid by any cause, or in respect 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) A 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.

(7) Every creditor of a corporation, before bringing any legal action or proceedings against any corporation under subsection (5), shall first deposit with the Permanent Secretary in the Ministry of Finance a bond in an amount to be determined by the High Court, from a financial institution in Nevis, for securing the payment of all costs as may become payable by the creditor.

(8) The High Court may from time to time, increase or vary any bond which has been ordered under subsection (7).

(9) The claim of a person which is statute barred 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.

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(10) Notwithstanding this section, tax claims and other claims by the Nevis Island Administration 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 XIII – CHANGE OF DOMICILE****122. Transfer of domicile to Nevis.**

(1) A 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, provided that the laws of such foreign domicile do not expressly prohibit such transfer.

(2) The transfer of domicile of any foreign corporation to Nevis shall not be deemed to affect any obligations or liabilities of said corporation incurred prior to such transfer.

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

**123. Application to Transfer Domicile to Nevis.**

A foreign corporation may apply for permission to transfer its domicile to Nevis by filing with the Registrar of Corporations, an Application to Transfer Domicile to Nevis which shall be filed in accordance with section 4.

**124. Contents of Application to Transfer Domicile to Nevis.**

An Application to Transfer Domicile to Nevis made by a foreign corporation shall contain:

- (a) the date on which and the jurisdiction where the corporation was incorporated, created or otherwise came into existence;
- (b) the name of the corporation and the authenticated translation of its name, if any;
- (c) the name of the foreign jurisdiction that constitutes the domicile;
- (d) a declaration that the transfer of domicile has been approved by all necessary corporate action;
- (e) a declaration that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing shareholders, creditors, claimants or other parties in interest;
- (f) a declaration that the corporation at the time of application to transfer domicile to Nevis is not in breach of any duty or obligation imposed upon it by the laws of its current jurisdiction;
- (g) the name of the corporation's registered agent in Nevis;
- (h) the address of the corporation's registered office in Nevis, which will be the physical place of business of its registered agent;

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- (i) any other pertinent information required to be set forth in Articles of Incorporation under section 24 of this Ordinance; and
- (j) any amendments to its Articles of Incorporation or charter or equivalent, that are to be effective upon filing the Application to Transfer Domicile to Nevis.

**125. Instruments to be submitted with application.**

An application by a foreign corporation under section 123 shall be submitted to the Registrar of Corporations together with:

- (a) a Certificate of Good Standing or its equivalent, duly issued by an authorised officer of the foreign domicile and such certificate to be issued no earlier than sixty (60) days prior to its submission to the Registrar of Corporations;
- (b) a certified copy of the Articles of Incorporation, with amendments, if any and if said instruments are not in the English language, an authenticated translation of such instruments duly certified;
- (c) a certified copy of the Certificate of Incorporation or its equivalent issued by an authorised officer of the foreign domicile;
- (d) a certified copy of a Certificate of Continuation or its equivalent issued by an authorised officer of the foreign domicile, if any; and
- (e) a certified copy of the certificate issued to the corporation, or an irrevocable undertaking that application has been made to discontinue the corporation on the foreign register.

**126. Execution of Application to Transfer Domicile to Nevis.**

The Application to Transfer Domicile to Nevis shall be in the English language and notwithstanding the requirements of section 4, shall be signed by any person performing functions equivalent to those of any officer or director, however named or described and who is authorised to sign such Application to Transfer Domicile to Nevis on behalf of the corporation.

**127. Certificate of Transfer of Domicile to Nevis.**

(1) Upon the filing of the Application to Transfer Domicile to Nevis and documents referred to in sections 124 and 125, together with the prescribed fees, if the Registrar of Corporations shall find that such instruments are in proper form and satisfy the requirements of this Part, and if the name of the corporation meets the requirements of sections 20 and 21, then the Registrar of Corporations shall deliver to the corporation a Certificate of Transfer of Domicile to Nevis and the corporation shall become domiciled in Nevis and shall thereafter be subject to all the provisions of this Ordinance.

(2) Where a corporation is issued a Certificate of Transfer of Domicile to Nevis under subsection (1), that corporation shall be deemed to have commenced its existence on the date the corporation was first incorporated, created or otherwise came into existence and shall have continued its existence in Nevis thereafter.

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- (3) A foreign corporation that has been redomiciled pursuant to this Part is for all purposes the same entity that existed before the redomiciliation.
- (4) When a redomiciliation takes effect then:
  - (a) all property owned by the redomiciled foreign corporation is vested in the corporation without further act or deed and if deeds or other instruments evidencing ownership or title must be filed in any foreign domicile, such instrument shall be filed only to give notice that the name and form of owner of such property has been changed, and not to evidence or record a change of owner or title holder;
  - (b) all debts, liabilities and other obligations of the redomiciled foreign corporation continue as obligations of the corporation;
  - (c) any legal action pending by or against the redomiciled foreign corporation may be continued as if the redomiciliation had not occurred, except that, if appropriate in the jurisdiction in which the legal action is pending, the caption of the legal action may be changed to reflect the redomiciliation;
  - (d) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of the redomiciled foreign corporation are vested in the corporation; and
  - (e) all of the shareholders of the redomiciled foreign corporation continue as shareholders of the corporation.
- (5) The transfer of domicile of any foreign corporation to Nevis shall not be deemed to affect any obligations or liabilities of said foreign corporation incurred prior to such transfer.
- (6) The corporation shall promptly adapt its Articles of Incorporation, Bylaws, management and records to comply with this Ordinance.

**128. Applicable law.**

The filing of an Application to Transfer Domicile to Nevis 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 to Nevis 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 under this Ordinance on that date and title to the corporation's assets shall also be governed by this Ordinance.

**129. Departure and jurisdiction of courts after departure.**

- (1) A corporation incorporated or otherwise existing under or subject to this Ordinance may become domiciled in any foreign domicile upon compliance with this Ordinance and the laws of the jurisdiction into which the corporation seeks to become domiciled.
- (2) The transfer of domicile of any corporation from Nevis shall not affect the jurisdiction of the High Court to hear and determine any legal action, by or against the corporation which occurred before the corporation ceased to be domiciled in Nevis.

**130. Certificate of Departure.**

(1) A corporation incorporated under this Ordinance shall submit for filing with the Registrar of Corporations, a Certificate of Departure which shall be executed and filed in accordance with the provisions of section 4.

(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 (\$1,000) and the total amount of such claims;
- (b) that the intended departure from Nevis and transfer of domicile to a foreign domicile 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 domicile is not in breach of any duty or obligation imposed upon it by this Ordinance or any other law of Nevis;
- (d) that the transfer of domicile to the foreign domicile 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 legal action arising out of actions or omissions occurring prior to its departure from Nevis, which agreement shall include the appointment of the Registrar of Corporations 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 registered mail.

(3) Upon the filing of a Certificate of Departure together with the prescribed fee, if the Registrar of Corporations shall find the instrument to be in proper form, then the Registrar of Corporations shall issue an Endorsement Certificate under his hand and seal certifying that the corporation has filed a Certificate of Departure out of Nevis.

**131. Effective date of departure.**

(1) 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 domicile, the departing corporation shall notify the Registrar of Corporations as to the effective date of the transfer of domicile outside of Nevis by filing with the Registrar of Corporations an instrument or copy thereof, duly issued by the relevant authority permitting or agreeing the change of domicile.

(2) As of the effective date of a transfer by a corporation under subsection (1) to the foreign domicile, that corporation shall be deemed to have ceased to be a corporation domiciled in Nevis and the Certificate of Departure shall take effect as at that date.



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(3) The departure of a corporation from Nevis is not valid until the provisions of sections 130 and 131 have been fully complied with.

(4) If a corporation fails to make the required filing under subsection (1) within thirty (30) days of the filing of the Certificate of Departure, the process of transfer to the foreign domicile shall be deemed to have been so cancelled by the corporation.

(5) Where a Certificate of Departure has been cancelled under subsection (4), and a corporation wishes to transfer its domicile, the Certificate of Departure shall be reissued and filed with the Registrar of Corporations in accordance with the provisions of sections 129 to 131.

#### **PART XIV – EMERGENCY TRANSFER OF DOMICILE INTO NEVIS**

##### **132. Application for emergency transfer of domicile.**

(1) During the existence of an emergency condition in its foreign domicile, any foreign corporation may, subject to and upon compliance with the further provisions of this Part, apply for an emergency transfer of its domicile to Nevis.

(2) A foreign corporation may apply for emergency transfer of domicile to Nevis by filing with the Registrar of Corporations:

- (a) instruments and certificates similar in respect to those required by sections 124 and 125, 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.

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

(4) If emergency conditions have affected ordinary means of communication, any of the documents or certificates hereby required may be submitted in writing by any mechanical, electronic or digital form of communication now known or hereinafter invented or adopted so long as the duly executed original documents and supporting documentation are received by the Registrar of Corporations within thirty (30) days thereafter or as soon as the emergency conditions cease to exist.

(5) If the Registrar of Corporations finds the required documents and certificates to be in proper form and upon payment of the prescribed fee, the Registrar of Corporations shall certify that the foreign corporation has filed all documents and paid all fees required by this Part, and shall deliver to the foreign corporation a Certificate of Emergency Transfer of Domicile, and such certificate of the Registrar of Corporations shall be prima facie evidence of the transfer by such foreign corporation of its domicile into Nevis.

##### **133. Governing law after emergency transfer of domicile.**

(1) Except to the extent expressly prohibited by this Ordinance or the laws of Nevis, after a foreign corporation transfers its domicile to Nevis pursuant to this Part, the corporation

shall have all of the powers which it had immediately prior to such transfer under the laws of the foreign domicile and the directors and officers of the corporation and their successors may manage the business and affairs of the corporation in accordance with the provisions of this Ordinance.

(2) The emergency transfer by any foreign corporation from its foreign domicile into Nevis pursuant to this Part shall not be deemed to affect any obligations or liabilities of such foreign corporation incurred prior to such transfer.

**134. Service of process after emergency transfer of domicile.**

All process issued out of the High Court, all orders made by the High Court, and all rules and notices of any kind required to be served on any foreign corporation which has transferred its domicile into Nevis pursuant to this Part may be served on the corporation pursuant to section 18 in the same manner as if such foreign corporation were a domestic corporation.

**135. Return to foreign domicile.**

(1) A foreign corporation which has transferred its domicile into Nevis pursuant to this Part may return to the foreign domicile by filing with the Registrar of Corporations, a Certificate of Departure pursuant to sections 130 and 131.

(2) Such application shall be accompanied by a certified resolution of the directors of the corporation authorising the return to the foreign domicile.

**PART XV – TAX AND EXEMPTIONS**

**136. Tax exemptions.**

(1) Under this Part, unless the context otherwise requires:

*“administrative office”* means a physical office in which clerical functions including filing, record keeping, maintenance of registers, storage or maintenance of financial records, making and receiving of telephone calls are carried out with respect to the operations of a corporation.

*“corporate residency tax”* means a tax to be charged to and payable by a corporation which elects to be a tax resident in Nevis.

*“Tax Resident Certificate”* means a certificate issued to a corporation which has elected to be tax resident in Nevis, by the Minister which enables the corporation to be tax resident in Nevis for all intents and purposes.

(2) A corporation subject to this Ordinance which does no business in Saint Christopher and 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 Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis, except as provided in sections 6 and 7.

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(3) Any dividend paid by a corporation which does not carry on business in Saint Christopher and Nevis to its shareholders, shall be exempt from any tax or withholding provisions of the laws of Nevis which would otherwise be applicable to such corporation or the recipient of the dividend.

(4) Unless a corporation is a tax resident corporation, no corporation shall be considered to be doing business in Nevis solely because it engages in one (1) 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 books and records in Nevis;
- (d) maintaining an administrative office in Nevis with respect to assets, business or activities done outside of Nevis;
- (e) maintaining a registered agent in Nevis;
- (f) investing in shares of a Nevis company, international business corporations or investing in the interest of Nevis limited liability companies, acting as a partner of partnership registered under the Partnership Act or the Limited Partnership Act, or as a beneficiary of an international trust or qualified foreign trust; or
- (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 authorised by the Nevis Island Administration.

**137. Licence required for an administrative office.**

(1) Notwithstanding section 136 (4) (d), no corporation shall maintain an administrative office in Nevis unless licensed to do so by the Minister of Finance.

(2) An application for a licence under subsection (1) shall be in such form as may be prescribed by the Minister and shall be accompanied by such particulars and such evidence, documentary or otherwise, as determined by the Minister.

(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) A corporation that maintains an administrative office in Nevis without a licence shall be subject to a fine of Thirty Thousand Dollars (\$30,000) and to be struck off the register.

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

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

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(b) wishes to maintain an administrative 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 thirty (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 such administrative office in Nevis within ten (10) days after receipt of the notice of rejection.

**138. Limitation of section 137.**

The provisions of section 137 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 14 of this Ordinance or in accordance with any other law enacted by the Nevis Island Assembly.

**139. Application and issue of Tax Resident Certificate.**

(1) A corporation may apply to the Minister for a Tax Resident Certificate and elect to pay a corporate residency tax in order to be eligible to be considered a tax resident in Nevis.

(2) A corporation shall apply for a Tax Resident Certificate by paying an application fee of Four Thousand and Fifty Dollars (\$4,050) or One Thousand Five Hundred Dollars United States Currency (USD\$1,500) and submitting an application in the prescribed form duly executed in accordance with section 4, through the Office of the Registrar of Corporations; upon filing the application together with the prescribed fee, the Minister shall issue a Tax Resident Certificate to the corporation.

(3) Where a corporation makes an application under this section for a Tax Resident Certificate, that corporation shall submit its financial statements and pay a corporate residency tax to the Inland Revenue Department in Nevis, within thirty (30) days after the end of the corporation's financial period.

(4) The corporate residency tax payable by a corporation shall be assessed on the gross revenue of the corporation and be charged at a rate equivalent to the current tax rate charged for unincorporated business tax on Nevis.

(5) Upon the issue of a Tax Resident Certificate to a corporation under this section, the provisions of section 136 (2) shall apply, except with respect to any of the prescribed taxes payable and the corporation shall be tax resident in Nevis for all purposes.

**140. Renewal of Tax Resident Certificate.**

(1) A corporation that applies for and is issued a Tax Resident Certificate by the Minister shall apply for a renewal of its Tax Resident Certificate at the same time when it submits its financial statements and pays the corporate residency tax in accordance with section 139.

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(2) A corporation which fails to file its financial statements and pay the corporate residency tax in accordance with this Part shall not be allowed to renew its Tax Resident Certificate until it has filed the outstanding financial statements and paid the corporate residency tax to the Inland Revenue Department.

(3) A corporation that fails to pay the corporate residency tax as it becomes due contravenes this section and shall be removed from the Register of Corporations, if taxes are owing for more than one (1) year after becoming due, and notice of failure to pay is delivered to the Office of the Registrar of Corporations by the Inland Revenue Department.

**141. Application of tax laws.**

A corporation which elects to be a tax resident and is registered as a taxpayer and fails to file a return on or before the date by which filing is required shall be subject to the penalty provisions under the Tax Administration and Procedures Ordinance Cap. 6.11.

**142. Applicability and effectiveness of Tax Resident Certificate.**

(1) A corporation shall only become a tax resident corporation in Nevis on and from the date of the issue of the Tax Resident Certificate by the Minister.

(2) A Tax Resident Certificate issued to a corporation shall only be applicable for the relevant income year for or in respect of which it was issued.

(3) Subject to section 143(2), a Tax Resident Certificate issued to a corporation shall be effective for the whole of the income year to which it relates.

**143. Ceasing to be a tax resident.**

(1) A corporation automatically ceases to be a tax resident upon the expiration of any existing Tax Resident Certificate issued to it by the Minister.

(2) A corporation may at any time during an income year elect to cease to be a tax resident corporation by completing and signing the prescribed form, and upon acknowledgement of receipt by the Minister or his designate, that corporation shall cease to be a tax resident corporation in Nevis.

**PART XVI – MISCELLANEOUS PROVISIONS****144. Advisory Committee.**

(1) The Minister may establish the Nevis Business Corporation Ordinance Advisory Committee which shall function as an advisory body for matters affecting this Ordinance and such body so established, shall consist of members appointed by the Minister.

(2) In establishing the Advisory Committee under subsection (1), the Minister shall have regard to the desirability of having members who possess the requisite expertise and knowledge of the Ordinance, the law of corporations and knowledge of the financial service industry.

**145. Functions of Advisory Committee.**

- (1) The Advisory Committee shall:
  - (a) advise the Minister on any matter that the Advisory Committee believes that the Minister should be aware of, on an annual basis by the 30<sup>th</sup> day of September in each year or on such more frequent occasions as may be necessary;
  - (b) provide recommendations regarding possible amendments to this Ordinance; and
  - (c) advise the Minister on any matter that relates to the Ordinance which is referred to it by the Minister.

(2) The Minister may defray or contribute towards the expenses of the Advisory Committee established under this section.

**146. Secretary to Advisory Committee.**

(1) There shall be a Secretary to the Advisory Committee who shall be a public servant appointed by the Permanent Secretary.

- (2) The duties of the Secretary shall be:
  - (a) to attend meetings of the Committee;
  - (b) to record the minutes of each meeting in a proper form; and
  - (c) generally to perform duties connected with the work of the Committee and as directed by the Committee.

**147. Appointment of Deputy Registrar.**

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

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

**148. Regulations.**

The Minister may make regulations for the purpose of carrying out and effectively administering the provisions of this Ordinance and for prescribing anything that needs to be prescribed.

**149. Penalty for default.**

Any person, natural or corporate, found in default of one or more provisions of this Ordinance for which no specific penalty is applicable, shall be liable to a fine not to exceed Ten Thousand dollars (\$10,000).

**150. Immunity from suit.**

(1) No personal liability, action or other proceeding shall attach to or lie against the Registrar of Corporations, Deputy Registrar or any other officer authorised to administer

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this Ordinance in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Ordinance.

(2) No action shall lie against the Nevis Island Administration, the Registrar, Deputy Registrar or any other authorised officer for any sums of money, damages or legal costs in respect of any act or failure to act or in respect of any act or thing done in good faith for the purpose of carrying the provisions of this Ordinance into effect.

**151. Repeal and savings.**

(1) The Nevis Business Corporation Ordinance Cap. 7.01(N) as amended is hereby repealed.

(2) Any existing corporation which at the commencement of this Ordinance is validly registered under the Nevis Business Corporation Ordinance Cap 7.01(N) as amended, shall continue to be registered under this Ordinance.

(3) Any registered agent of corporations which at the commencement of this Ordinance is validly licensed under the Nevis Business Corporation Ordinance, Cap 7.01(N) as amended shall continue to be a registered agent under this Ordinance.

(4) 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.

HONOURABLE FARRELSMITHEN  
*President*

Passed by the Nevis Island Assembly this 20<sup>th</sup> day of July, 2017.

MYRA A. WILLIAMS  
*Clerk of the Nevis Island Assembly*