

# CHAPTER 151

## LIMITED LIABILITY COMPANIES ACT

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• Act • Subsidiary Legislation •

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### ACT

Act No. 36 of 2008

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**CHAPTER 151**  
**LIMITED LIABILITY COMPANIES ACT**

**An Act to make provision for the incorporation, regulation and operation of limited liability companies and related matters.**

**Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.**

[Act No. 36 of 2008.]

[Date of commencement: 23rd December, 2008.]

PART I

*Preliminary*

**1. Short title and commencement**

(1) This Act may be cited as the Limited Liability Companies Act, 2008.

(2) This Act comes into operation on a day that the Governor-General may, by Proclamation printed in the *Gazette*, appoint.

**2. Interpretation**

In this Act—

“**articles**” means, unless qualified—

- (a) the original or restated articles of incorporation, articles of registration, articles of amendment, articles of merger, articles of continuation, articles of reorganisation and articles of consolidation, articles of dissolution or articles of revival; and
- (b) any statute, letters patent, memorandum of association, certificate of incorporation, or other corporate instrument evidencing the existence of a body corporate continued as an international business company under this Act;

“**Authority**” means the Saint Vincent and the Grenadines International Financial Services Authority established under the Saint Vincent and the Grenadines International Financial Services Authority Act;

[Chapter 108.]

“**Companies Act**” means the Companies Act, 1994, of Saint Vincent and the Grenadines;

[Chapter 143.]

“**continued**” means unless the context requires otherwise, continued within the context of this Act;

“**contribution**” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services that a person contributes to a LLC in his capacity as a member;

“**Court**” means the High Court of the State or a judge thereof;

“**dollar**” or “**\$**” means a dollar in the currency of the United States of America;

“**domestic LLC**” means a LLC formed or continued under this Act;

“**economic interest**” means a member’s share of the profits and losses of a LLC and a member’s right to receive distributions of the LLC’s assets;

“**Executive Director**” means the person appointed under section 8(2) of the Saint Vincent and the Grenadines International Financial Services Authority Act, 1996;

[Chapter 108.]

“**foreign LLC**” means a LLC formed under the laws of any foreign jurisdiction;

“**Gazette**” means the Saint Vincent and the Grenadines *Gazette* published by authority of the Government of Saint Vincent and the Grenadines and includes any supplement thereto;

“**inspector**” means an inspector appointed by an order made under section 93(2);

“**International Business Companies Act**” means the International Business Companies (Amendment and Consolidation) Act, 2007, of Saint Vincent and the Grenadines;

[Chapter 149.]

“**Judge**” means a Judge of the Court;

“**limited liability company**” or “**LLC**” means a LLC formed or continued under this Act;

“**liquidator**” means a person carrying out the winding up of a LLC;

“**LLC agreement**” means an agreement entered into by the members of a LLC in accordance with section 13;

“**LLC interest**” means the totality of a member’s interest including all rights incidental to membership as may be provided in a LLC agreement or otherwise provided by this Act, a member’s share of the profits and losses of a LLC and a member’s right to receive distributions of the LLC’s assets;

“**manager**” means a person appointed to be a manager of a LLC under section 42 or designated as manager of a LLC pursuant to a LLC agreement;

“**member**” means a person who has been admitted to membership of a LLC in accordance with section 34 or, in the case of a foreign LLC, in accordance with the laws of the foreign jurisdiction under which the foreign LLC is formed;

“**Minister**” means the Minister responsible for finance;

“**person**” includes an individual, a partnership (whether general or limited and whether domestic or foreign), a LLC, a foreign LLC, a trust, an estate, an association, a corporation, a custodian, a nominee or any other individual or entity in its own or any representative capacity;

“**Register**” means the Register of Limited Liability Companies maintained by the Registrar in accordance with section 12;

“**Registered agent**” means a person licensed to carry on the business of offshore representation under the Registered Agent and Trustee Licensing Act, 1996;

[Chapter 105.]

“**Registrar**” means the Registrar of Limited Liability Companies;

“**relevant licence**” means a licence issued under the Registered Agent and Trustee Licensing Act, 1996;

[Chapter 105.]

“**resident**” means—

- (a) a natural person who is ordinarily resident and subject to income tax in the State under general principles of State income taxation;
- (b) a trust, company, partnership, limited partnership or other body, incorporated, established, formed or organised under the laws of the State, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of paragraph (a) or (c) hereof; and
- (c) any other trust, corporation, partnership, limited partnership, or other entity who or which is a resident of, or ordinarily resident or domiciled in, the State under general principles of State income taxation,

but shall not include—

- (d) an international trust registered under the International Trusts Act;
- (e) an international business company incorporated or continued under this Act;
- (f) an international insurance company licensed under the International Insurance (Amendment and Consolidation) Act;
- (g) a mutual fund licensed under the Mutual Funds (Amendment) Act; or
- (h) an international bank licensed under the International Banks Act, 2004,

so long as and to the extent that the registration, incorporation, continuation or compliance, as the case may be, continues under the provisions of the applicable Act;

[Chapter 99, Chapter 154, Chapter 491, Act No. 43 of 2004.]

“**Saint Vincent and the Grenadines company**” means a body corporate that is formed or continued under this Act, a body corporate that is incorporated, registered or continued under the Companies Act or a body corporate that is incorporated or continued under the International Business Companies Act;

[Chapter 143, Chapter 148.]

“**State**” means the State of Saint Vincent and the Grenadines.

### 3. Name of LLC

The name of a LLC—

- (a) must contain the words “Limited Liability Company” or the abbreviation “LLC”;
- (b) may contain the name of a member or manager;

- (c) must not be the same as or similar to the name of any corporation, limited partnership, business, trust or LLC, registered, formed or organised under the laws of Saint Vincent and the Grenadines or reserved under this or any other Act; and
- (d) must not be a name prohibited—
  - (i) by any other law in force in Saint Vincent and the Grenadines, or
  - (ii) by Regulations made by the Minister under section 100.

#### **4. Reservation of name**

- (1) The exclusive right to the use of a name may be reserved by—
  - (a) a person intending to form a LLC under that name;
  - (b) a LLC that proposes to change its name; or
  - (c) a foreign LLC (by whatever name called) intending to continue under this Act.

(2) The reservation of a specified name shall be made by filing with the Registrar an application executed by the registered agent on behalf of an applicant in the prescribed form specifying the name to be reserved and the name and address of the applicant.

(3) If the Registrar approves the name and determines that it is available for use by a LLC, the Registrar shall reserve the name for the exclusive use of the applicant for a period of up to one hundred and twenty days.

(4) A name reserved under subsection (3) may, by application made under subsection (2), be reserved for three days without charge and thereafter at a charge of U.S. \$50 per day for a period of up to thirty days.

- (5) The prescribed fee shall be paid—
  - (a) upon the filing of an application to reserve a name under subsection (2); and
  - (b) upon the filing of each application to renew the reservation of a name under subsection (4).

#### **5. Name change**

- (1) Where a LLC is formed or continued under, or changes its name to, a name that—
  - (a) is reserved under section 4;
  - (b) does not comply with section 3; or
  - (c) is, in the opinion of the Registrar, for any reason objectionable,

the Registrar may, by serving written notice on the LLC, direct it to change its name within such period of time as he may stipulate.

(2) If a LLC does not change its name to a name that complies with section 3 within such time as the Registrar specifies in the written notice served under subsection (1), the Registrar may assign a new name to the LLC and enter the assigned name in the Register.

- (3) If the Registrar assigns a new name to a LLC under this section—
  - (a) he must issue a new certificate of formation for the LLC recording its new name; and
  - (b) the name of the LLC is changed to the name assigned by the Registrar.

(4) A LLC that, after the issue by the Registrar of a new certificate of formation under subsection (3)(a), uses the former name of the LLC commits an offence.

## **6. Registered office**

(1) A LLC shall at all times have a registered office in Saint Vincent and the Grenadines.

(2) The registered office must be provided by a person who holds a relevant licence.

(3) On the formation of a LLC, its registered office is as specified in its articles of formation.

(4) A LLC may change the location of its registered office by filing a notice in the prescribed form with the Registrar.

(5) The change of registered office takes effect upon the notice being registered by the Registrar.

(6) If the person providing the registered office for a LLC ceases to hold a relevant licence, the LLC shall, within fourteen days of becoming aware that the person concerned has ceased to hold a relevant licence, change the location of its registered office so that it is provided by a person who holds a relevant licence.

(7) A LLC that contravenes subsection (6) commits an offence.

## **7. Registered agent**

(1) A LLC shall at all times have a registered agent in Saint Vincent and the Grenadines.

(2) The registered agent of a LLC must be a person who holds a relevant licence.

(3) On the registration of a LLC, its registered agent is as specified in its articles of formation.

(4) A LLC may change its registered agent by filing a notice in the prescribed form with the Registrar.

(5) The change of registered agent takes effect upon the notice being registered by the Registrar.

(6) If the registered agent of a LLC ceases to hold a relevant licence, the LLC shall, within fourteen days of becoming aware that its registered agent has ceased to hold a relevant licence, change its registered agent to a person who holds a relevant licence.

(7) A LLC that contravenes subsection (6) commits an offence.

## **8. Registered agent ceasing to act for LLC**

(1) If the registered agent of a LLC desires to cease to act as its registered agent, he must give not less than thirty days written notice of his intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) must be sent—

(a) to a member of the LLC at the address of the member last known to the registered agent; or

(b) to the person from whom the registered agent last received instructions concerning the LLC if the registered agent is not aware of the identity of any member of the LLC.

(3) The registered agent must, within seven days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.

(4) If, at the time of expiry of the notice given under subsection (1) the LLC has not filed a notice of change of registered agent under section 7(4), the Registrar shall publish a notice in the *Gazette* that, unless the LLC files notice of a change of registered agent within thirty days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register and dissolved.



(5) If a LLC fails to file a notice of change of registered agent within thirty days of publication of a notice in the *Gazette* under subsection (4), the Registrar must strike the LLC off the Register whereupon it is dissolved, and the Registrar must publish a notice of the striking off and dissolution of a LLC under this section in the *Gazette*.

(6) The striking off of a LLC from the Register is effective from the date of the notice published in the *Gazette*.

(7) A registered agent who contravenes subsection (3) commits an offence.

## **9. Nature of business**

(1) Subject to subsection (2), a LLC may carry on any lawful business, purpose or activity not prohibited by any law for the time being in force in Saint Vincent and the Grenadines, whether or not for profit.

(2) A LLC shall not—

- (a) in the ordinary course of business, make its goods or services available to a person who is resident;
- (b) without first obtaining any licence required under the Aliens (Land-Holding Regulation) Act, own an interest in real property situate in the State, other than a lease of property for use as an office from which to communicate with members or where books or records of the company are prepared or maintained;
- (c) carry on any activity for which it requires a licence granted by the Authority, unless such a licence has been granted.

[Chapter 316.]

(3) Subject to subsection (2), a LLC shall possess and may exercise all the powers and privileges granted by this Act or by any other law of Saint Vincent and the Grenadines or by its articles or agreement, together with any powers incidental thereto, including the power to—

- (a) sue and be sued, complain and defend, in its name;
- (b) purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in it, wherever located;
- (c) sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (d) lend money to and otherwise assist its members;
- (e) purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other LLCs, domestic or foreign corporations, associations, general or limited partnerships, or individuals, or direct or indirect obligations of Saint Vincent and the Grenadines or of any government, state, territory, governmental district or municipality or of any instrumentality of it;
- (f) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the LLC may determine, issue notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;
- (g) lend money for its proper purposes, invest and re-invest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;

- (h) conduct its business, carry on its operations and have and exercise the powers granted by this Act in Saint Vincent and the Grenadines, or in any foreign jurisdiction;
- (i) elect or appoint managers and agents and define their duties and fix their compensation;
- (j) make and alter operating agreements, not inconsistent with its articles or with the laws of Saint Vincent and the Grenadines, for the administration and regulation of the affairs of the LLC;
- (k) indemnify a member or manager or former member or manager of the LLC against expenses actually and reasonably incurred by him or it in connection with the defence of an action, suit or proceeding, civil or criminal, in which he or it is made a party by reason of being or having been such member or manager, except in relation to matters as to which he or it shall be adjudged in the action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, and to make any other indemnification that is authorised by the articles or by an article of the operating agreement or resolution adopted by the members after notice;
- (l) cease its activities and dissolve; and
- (m) become a member of a general partnership, limited partnership, joint venture or similar association, company or any other LLC, so far as these powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the LLC.

(4) A LLC that contravenes subsection (2) commits an offence.

## **10. Business transactions**

Except as provided in the articles or the LLC agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business, with a LLC and has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

## **11. Indemnity**

Subject to such standards and restrictions, if any, as are specified in the articles or in its LLC agreement, a LLC may indemnify and hold harmless any member or manager or other person from and against any claims and demands whatsoever.

## **PART II**

### *Formation of LLC*

## **12. Formation of a LLC**

(1) One or more persons may form a LLC by requiring a registered agent to sign articles of formation in the prescribed form and filing them with the Registrar.

(2) The articles of formation must contain—

- (a) the name of the LLC;
- (b) the address of its first registered office and the name and address of its first registered agent;
- (c) if the LLC proposes to have a specific date of dissolution, the latest date on which the LLC must dissolve;

- (d) if the LLC will be formed on a date subsequent to the date of filing of the articles of formation, that date; and
- (e) any other matters as the members may determine.

(3) A LLC is formed on the date specified in the certificate of formation issued by the Registrar under subsection (6).

(4) A LLC formed under this Act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until it is dissolved.

(5) If the Registrar is satisfied that the requirements of this Act in respect of formation have been complied with, the Registrar must, upon receipt of articles of formation, register the articles in the Register and issue a certificate of formation.

(6) The certificate of formation must specify the date of the formation of the LLC, which must be—

- (a) the date of registration of the articles of formation; or
- (b) if a later date for the formation of the LLC is specified in the articles of formation, that date.

### **13. LLC agreement**

(1) A written agreement concerning the affairs of a LLC and the conduct of its business may be entered into by the members of the LLC either before, after or at the time of the signing of articles of formation and the agreement shall take effect, whenever entered into, on the formation of the LLC or upon such other date as may be provided in the agreement.

(2) A LLC agreement shall not be unenforceable by reason of there being only one person who is a party to the LLC agreement.

(3) A LLC agreement may provide rights to any person, including a person who is not a party to the limited liability agreement, to the extent set forth therein.

### **14. Amendment of articles of formation**

The articles of formation may be amended at any time and for any lawful purpose by filing articles of amendment in the prescribed form with the Registrar, specifying—

- (a) the name and number of the LLC; and
- (b) the amendment to the articles.

### **15. Signing of documents**

(1) Subject to this Act, a document which is required or permitted by this Act to be filed with the Registrar shall be signed by one or more persons authorised by the LLC.

(2) Unless otherwise provided in the articles or the LLC agreement, a person may—

- (a) sign any document required or permitted to be filed under this Act or any amendment thereof; and
- (b) enter into a LLC agreement or agree to any amendment thereof by an agent authorised by that person, including an attorney-in-fact.

(3) Notwithstanding any other enactment, it is not necessary for an authorisation given under subsection (2), including a power of attorney, to be in writing, sworn to, verified or acknowledged or filed with the Registrar but any authorisation in writing must be retained by the LLC.

(4) The signing of a document by an authorised person constitutes a declaration that the individual believes the facts stated therein are true.

## **16. Powers of Court**

(1) If a person who is required to sign a document under this Act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may apply to the Court to direct the signing of the document.

(2) If, on an application made under subsection (1) the Court finds that any person who is required to sign a document has failed or refused to do so, it—

- (a) may order the person to sign the document; and
- (b) may order the Registrar to register the document, whether or not the document has been signed.

(3) If a person who is required to execute a LLC agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may apply to the Court to direct the execution of the LLC agreement or amendment thereof.

(4) If the Court finds in respect of subsection (1) that the LLC agreement or amendment thereof should be executed and that any person required to execute the LLC agreement or amendment thereof has failed or refused to do so, it shall make an order granting appropriate relief.

## **17. Filing requirements**

(1) The original signed copy of the articles of formation or any articles of amendment or cancellation (or of any judicial order of amendment or cancellation), and of any articles of merger or consolidation and of any restated articles shall be filed with the Registrar.

(2) A person who signs a document as an agent or fiduciary need not show evidence of his authority as a prerequisite to filing.

(3) The amendment or restatement of articles of formation shall be effective upon—

- (a) the acceptance by the Registrar for filing of a certificate of amendment or restatement;
- (b) the filing of a judicial order of amendment; or
- (c) such future date or time as may be specified in the certificate of amendment or restatement or the judicial order of amendment, as the case may be.

## **18. Certificate of formation is notice**

The fact that a certificate of formation has been issued by the Registrar is notice that the entity formed in connection with the issue of the certificate of formation is a LLC formed under the laws of Saint Vincent and the Grenadines and of all other facts specified therein as required pursuant to section 12.

## **19. Restated articles**

(1) A LLC may integrate into a single instrument all the provisions of its articles of formation that are then in effect and operative as a result of the filing of one or more articles of amendment pursuant to this Part and may at the same time amend its articles of formation by adopting restated articles of formation.

(2) If the restated articles of formation merely restate and integrate but do not further amend the original articles of formation, as amended or supplemented by any articles of amendment filed under this Act, the articles must be specifically designated “Restated Articles of Formation” together with such other words as the LLC considers appropriate and must be signed by an authorised person and filed in the prescribed form in accordance with section 17.

(3) If the restated articles of formation restate and integrate and also further amend in any respect the articles of formation, as amended or supplemented, the articles must be specifically designated “Amended and Restated Articles of Formation” together with such other words as the LLC considers appropriate and must be signed by an authorised person and filed in the prescribed form in accordance with section 17.

(4) The restated articles of formation shall state—

- (a) the LLC’s present name and number;
- (b) the name under which it was originally formed (if different);
- (c) the date of filing of its original articles of formation and the future effective date or time (which must be a date or time certain) of the restated articles if they are not to be effective on filing; and
- (d) that they are duly signed and are being filed in accordance with this section.

(5) If the restated articles only restate and integrate and do not further amend a LLC’s articles of formation as thereto for amended or supplemented and there is no discrepancy between those provisions and the restated articles, it shall state that fact as well.

(6) If the Registrar is satisfied that the relevant requirements of this Act have been complied with, the Registrar must, upon receipt of restated articles of formation, register the articles in the Register and issue a certificate of registration of the restated articles of formation.

(7) The certificate of registration of the restated articles of formation must specify the date upon which the restated articles are effective, which must be—

- (a) the date of registration of the restated articles of formation; or
- (b) if a later date is stated in the articles under subsection (4)(c), that date.

(8) Any amendment or change effected by the restatement and integration of the articles of formation is subject to any other provision of this Act that would apply if separate articles of amendment had been filed to effect such amendment or change.

## 20. Merger and consolidation

(1) In this section, “**other business entity**” means a company, a trust, an association, a partnership (whether general or limited), or a foreign LLC, but excluding a domestic LLC, carrying on business or holding land, or any other unincorporated business.

(2) Pursuant to an agreement of merger or consolidation, a domestic LLC may merge or consolidate with or into one or more LLCs or other business entities formed or organised under the laws of Saint Vincent and the Grenadines or of any foreign jurisdiction, with such domestic LLC or other business entity as the agreement provides being the surviving or resulting domestic LLC or other business entity.

(3) Unless otherwise provided in the LLC agreement, a merger or consolidation shall be approved by each domestic LLC that is to merge or consolidate the members of or, if there is more than one class or group of members, then by each class or group of members and in either case, by members who own more than fifty per cent of the then current percentage or other interest in the profits of the domestic LLC owned by all of the members or by the members in each class or group, as appropriate.

(4) In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic LLC or other business entity that is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic LLC or other business entity or, in addition to or in lieu thereof, may be exchanged or converted into cash, property, rights or securities of, or interests in, a LLC or other business entity that is not the surviving or resulting LLC or other business entity in the merger or consolidation.

(5) Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(6) If a domestic LLC is merging or consolidating under this section, the domestic LLC or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the Registrar that shall state—

- (a) the name and jurisdiction of formation or organization of each of the LLCs or other business entities that propose to merge or consolidate;
- (b) that an agreement of merger or consolidation has been approved and executed by each of the domestic LLCs or other business entities that propose to merge or consolidate;
- (c) the name of the surviving or resulting domestic LLC or other business entity;
- (d) in the case of a merger in which a domestic LLC is the surviving entity, such amendments, if any, to the certificate of formation of the surviving domestic LLC to change its name as are desired to be effected by the merger;
- (e) the future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
- (f) that the agreement of merger or consolidation is filed at a place of business of the surviving or resulting domestic LLC or other business entity, and the address thereof; and
- (g) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic LLC or any person holding an interest in any other business entity that proposes to merge or consolidate.

(7) Unless a future effective date or time is provided in articles of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Registrar of articles of merger or consolidation in the prescribed form.

(8) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic LLC that is not the surviving or resulting entity in the merger or consolidation.

(9) An agreement of merger or consolidation approved in accordance with subsection (2) may—

- (a) effect any amendment to the LLC agreement; or
- (b) effect the adoption of a new LLC agreement for a LLC that is the surviving or resulting LLC in the merger or consolidation.

(10) Any amendment to a LLC agreement or adoption of a new LLC agreement made pursuant to subsection (9) shall be effective at the effective time or date of the merger or consolidation and this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a LLC agreement or other agreement or as otherwise permitted by law including that the LLC agreement of any constituent LLC to the merger or consolidation (including a LLC formed for the purpose of consummating a merger or consolidation) shall be the LLC agreement of the surviving or resulting LLC.

## **21. Effect of merger**

(1) When any merger or consolidation is effected under this section, all the rights, privileges and powers of each of the domestic LLCs and other business entities that have merged or consolidated, and all property whether real or personal, and all debts due to any of the domestic LLCs and other business entities, and all other things and causes of

action belonging to each of such domestic LLCs and other business entities, shall vest in the surviving or resulting domestic LLC or other business entity.

(2) The title to any real property vested by deed or otherwise, under the laws of Saint Vincent and the Grenadines or elsewhere, in any such domestic LLC or other business entity, shall not revert or be in any way impaired by reason of this Act, but all rights of creditors and all liens upon any property of any domestic LLC or other business entity shall be preserved unimpaired, and all debts, liabilities and duties of each of the domestic LLCs or other business entity that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic LLC or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(3) Subject to any agreement to the contrary, a merger or consolidation of a domestic LLC, including a domestic LLC that is not the surviving or resulting entity in the merger or consolidation, does not require the domestic LLC to wind up its affairs under section 66 or pay its liabilities and distribute its assets under section 70.

### PART III

#### *Series LLC*

#### **22. Provision for series LLC**

A LLC agreement may establish or provide for the establishment of one or more designated series of members, managers or LLC interests having separate rights, powers or duties with respect to specified property or obligations of the LLC or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

#### **23. Requirements for establishment of series LLC**

(1) Notwithstanding anything to the contrary set forth in this Act or under other applicable law, in the event that a LLC establishes or provides for the establishment of one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the LLC, or any other series thereof, and if the LLC agreement so provides, and if notice on the limitation on liabilities of a series as referenced in this section is set forth in the articles of formation of the LLC, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the LLC generally or any other series thereof, and, unless otherwise provided in the LLC agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally or any other series thereof shall be enforceable against the assets of such series.

(2) Notice in the articles of formation of the limitation on liabilities of a series referenced in subsection (1) shall be sufficient for all purposes of subsection (1) whether or not the LLC has established any series when such notice is included in the articles of formation, and there shall be no requirement that any specific series of the LLC be referenced in such notice.

(3) The fact that articles of formation that contain the notice referred to in subsection (2) of the limitation on liabilities of a series, is on file with the Registrar, shall constitute notice of such limitations on liabilities of a series.

## **24. Member or manager may agree to be personally liable for debts**

Notwithstanding section 36 of this Act, under a LLC agreement or under another agreement, a member or manager may agree to be obligated personally for any or all the debts, obligations and liabilities of one or more series.

## **25. Provisions for series LLC agreement including voting**

(1) A LLC agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may, from time to time, be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(2) A LLC agreement may provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the LLC agreement a class or group of the series of LLC interests that was not previously outstanding.

(3) A LLC agreement may provide that any member or class or group of members associated with the series shall have no voting rights.

## **26. Other voting provision of series LLC agreement**

(1) A LLC agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter.

(2) Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

## **27. Management of series LLC**

(1) Unless otherwise provided in a LLC agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty per cent of the said percentage or other interest in the profits controlling, except, that if a LLC agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the LLC agreement.

(2) The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a LLC agreement.

(3) A series may have more than one manager.

(4) Subject to section 53, a manager shall cease to be manager with respect to a series as provided in a LLC agreement.

(5) Except as otherwise provided in a LLC agreement, any event under this Act or in a LLC agreement that causes a manager to cease to be a manager with respect to a series shall not in itself, cause such manager to cease to be a manager of the LLC or with respect to any other series thereof.

## **28. Member entitlement to distributions of series LLC**



(1) Notwithstanding section 57, but subject to section 29 and section 32, and unless otherwise provided in a LLC agreement, at the time a member associated with a series that has been established in accordance with section 23 becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to a creditor of the series with respect to the distribution.

(2) A LLC agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

## **29. Limitations on distributions of series LLC**

(1) Notwithstanding section 58, a LLC may make a distribution with respect to a series that has been established in accordance with section 23.

(2) A LLC shall not make a distribution with respect to a series that has been established in accordance with section 23 to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their LLC company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability.

(3) For purposes of subsection (2), the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a *bona fide* retirement plan or other benefits program.

(4) A member who receives a distribution in violation of this section, and who knew at the time of the distribution that the distribution violated this section, shall be liable to a series for the amount of the distribution.

(5) A member who receives a distribution in violation of this section, and who did not know at the time of the distribution that the distribution violated this section, shall not be liable for the amount of the distribution.

(6) Subject to section 58(3), which shall apply to any distribution made with respect to a series under this section, this section shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

## **30. Assignment of interest of series LLC**

(1) Unless otherwise provided in the LLC agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member’s LLC interest with respect to such series.

(2) Except as otherwise provided in a LLC agreement, any event under this Act or a LLC agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the LLC or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

## **31. Termination of series LLC**

(1) Subject to section 64, except to the extent otherwise provided in the LLC agreement, a series may be terminated and its affairs wound up without causing the dissolution of the LLC.

(2) The termination of a series established in accordance with section 23 shall not affect the limitation on liabilities of such series provided by section 23.

(3) A series is terminated and its affairs shall be wound up upon the dissolution of the LLC under section 64 or otherwise upon the first to occur of the following—

- (a) at the time specified in the LLC agreement;
- (b) upon the happening of events specified in the LLC agreement;
- (c) unless otherwise provided in the LLC agreement, upon the affirmative vote or written consent of the members of the LLC associated with such series or, if there is more than one class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds of the then-current percentage or other interest in the profits of the series of the LLC owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate; or
- (d) the termination of such series under section 33.

### **32. Procedure for winding up series LLC**

(1) Notwithstanding section 66(1), unless otherwise provided in the LLC agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty per cent of the then current percentage or other interests in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with section 23, the Court, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidator.

(2) The persons winding up the affairs of a series may, in the name of the LLC and for and on behalf of the LLC and such series, take all actions with respect to the series as are permitted under section 66.

(3) The persons winding up the affairs of a series shall take proper account of the claims and obligations of the series and distribute the assets of the series as provided in section 70, which section shall apply to the winding up and distribution of assets of a series.

(4) Actions taken in accordance with this section shall not affect the liability of members and shall not impose liability on a liquidator.

### **33. Termination of a series LLC when not practicable to carry on business**

On application by or for a member or manager associated with a series established in accordance with section 23, the Court may order termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with the LLC agreement.

## **PART IV**

### *Members*

### **34. Admission of members**

(1) A person acquiring a LLC interest is a member of the LLC upon the later of the following occurrences—

- (a) the formation of the LLC; or
- (b) the time provided in and upon compliance with the LLC agreement or, if the agreement does not so provide, when the person's admission appears in the records of the LLC.

(2) After the formation of a LLC, a person acquiring an interest in it is admitted as a member of the LLC—

- (a) in the case of a person acquiring a LLC interest directly from the LLC, when the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, upon the consent of all members; and
- (b) in the case of an assignee of a LLC interest, when the person's admission appears on the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, as provided in Part VIII.

(3) A person may be admitted to a LLC as a member of it and may receive an interest without making a contribution or being obligated to make a contribution to the LLC.

(4) The terms and conditions of a person's admission to the LLC may be specified in a separate agreement with the LLC and that agreement is deemed incorporated into the LLC agreement.

### **35. Classes and voting rights of members**

(1) A LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the agreement may provide, and may make provision for the creation in the manner provided of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties ranking prior to existing classes and groups of members.

(2) A LLC agreement may provide for the taking of any action, including the amendment of the LLC agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the LLC agreement a class or group of interests that was not previously outstanding.

(3) A LLC agreement may grant to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of the members or managers, on any matter and voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(4) A LLC agreement that grants a right to vote may specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by written consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(5) A LLC agreement may provide that a member's share of the profits, losses and other distributions from the LLC may vary from time to time and may vary from a member's proportionate voting rights.

### **36. Liability to third parties**

Except as otherwise provided in section 58, the debts, obligations and liabilities of a LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no member or manager of a LLC is liable personally for any such debt, obligation or liability of the LLC solely by reason of being a member or manager of the LLC.

### **37. Ceasing to be member of LLC**

(1) Unless otherwise provided in a LLC agreement, or with the written consent of the members, a person ceases to be a member of a LLC when he—

- (a) makes an assignment of the totality of his economic interests for the benefit of creditors;
- (b) files for voluntary winding up;
- (c) is adjudged a bankrupt or insolvent, or has entered against him an order for relief in any bankruptcy or insolvency proceedings;
- (d) files a petition or defence seeking for himself any re-organisation, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (e) files a defence or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;
- (f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties;
- (g) dies;
- (h) becomes incapacitated; or
- (i) resigns or is expelled.

(2) Unless otherwise provided in a LLC agreement, or with the written consent of all members, a person ceases to be a member of a LLC one hundred and twenty days after the commencement of any proceeding against the member seeking re-organisation, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief under any law if the proceedings have not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties the appointment is not vacated or stayed, or within ninety days after the expiration of any such stay, the appointment is not vacated.

### **38. Access to and confidentiality of information**

(1) Each member of a LLC has the right, subject to reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be specified in the LLC agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the LLC from time to time upon reasonable request for any purpose reasonably related to the member's interest as a member of the LLC—

- (a) true and full information regarding the status of the business and financial condition of the LLC;
- (b) a current list of the name and last known business, residence or mailing address of each member, holder of an economic interest and manager;
- (c) a copy of any written LLC agreement and articles of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the agreement and any articles and all amendments thereto have been executed;
- (d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and that each member has agreed to contribute in the future, and the date on which each became a member; and
- (e) such other information regarding the affairs of the LLC as is just and reasonable.

(2) Each manager has the right to examine the information described in subsection (1) for a purpose reasonably related to his position as manager.

(3) Unless otherwise provided in the LLC agreement, the manager of a LLC may not keep confidential from the members any information, trade secrets or other information of the LLC.

(4) Any request by a member under this section must be in writing and state the purpose of the request.

(5) If—

(a) a request made by a member or manager under this section is refused or not complied with; or

(b) a manager of a LLC acts in breach of subsection (3),

any interested person may, on notice to the LLC, apply to the Court for an order to require the LLC, manager or members to comply with its obligations under this section, and the Court may so order and make any further order it thinks fit.

### **39. Form of records**

A LLC may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time.

### **40. Remedies for breach**

A LLC agreement may provide that—

(a) a member who fails to comply with the terms and conditions of the LLC agreement shall be subject to such penalties as are specified in the agreement; and

(b) at the time or upon the happening of events specified in the LLC agreement, a member shall be subject to such penalties as are specified in the agreement.

## **PART V**

### *Managers*

### **41. Managers**

(1) A person may be named or designated as a manager of a LLC as specified in section 42(2).

(2) A LLC agreement may provide for the annual or other election of the manager or managers.

### **42. Management of LLC**

(1) Unless otherwise provided in a LLC agreement, the management of a LLC shall vest in its members in proportion to their then current percentage share in the profits of the LLC regardless whether or not the economic interest of a member may have been previously conveyed to another, members owning more than fifty per cent of that percentage share or other interest in the profits having a controlling interest.

(2) Notwithstanding subsection (1), if a LLC agreement provides for the management, in whole or in part, of a LLC by a manager, the management of the LLC to the extent so provided shall vest in the manager who shall be chosen by the members in the manner provided in the agreement.

(3) The manager shall hold the offices and have the responsibilities accorded to him by the members as specified in a LLC agreement.

(4) Subject to section 53, a manager ceases to be manager as provided in the agreement.

#### **43. Contributions by manager**

(1) Unless otherwise provided in a LLC agreement, a manager of a LLC may make contributions to the company and share in the profits and losses of, and distributions from, the LLC as a member.

(2) A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and except as provided in the LLC agreement has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his participation in the LLC as a member.

#### **44. Classes and voting rights**

(1) A LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the agreement provides, and may make provision for the creation in the manner provided in the agreement of additional classes or groups of managers having such relative rights, powers and duties as may, from time to time, be established, including rights, powers and duties ranking prior to existing classes and groups of managers.

(2) A LLC agreement may provide for the taking of any action, including the amendment of the agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLC agreement a class or group of interests that was not previously outstanding.

(3) A LLC agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote separately, or with all, or any, class or group of managers or members, on any matter and voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(4) A LLC agreement that grants a right to vote may specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by written consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

#### **45. Remedies for breach**

A LLC agreement may provide that—

- (a) a manager who fails to comply with the terms and conditions of the LLC agreement shall be subject to such penalties as are specified in the agreement; and
- (b) at the time or upon the happening of events specified in the LLC agreement, a manager shall be subject to such penalties as are specified in the agreement.

#### **46. Reliance on reports and information by member or manager**

A member or manager of a LLC is entitled to rely in good faith upon the records of the LLC and upon such information, opinions, reports or statements presented to the LLC by any of its other managers, members, officers, employees, or committees of the LLC, or by any other person as to matters the members or manager reasonably believe are within such other person's professional or expert competence and who has been selected with

reasonable care by or on behalf of the company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

#### **47. Delegation of managerial powers**

(1) Unless otherwise provided in the LLC agreement, a member or manager of a LLC has the power and authority to delegate to one or more other persons the member's or manager's, as the case maybe, rights and powers to manage and control the business and affairs of the LLC, including to delegate to agents, officers and employees of a member or manager of the LLC, and to delegate by a management agreement or another agreement with, or otherwise to, other persons.

(2) Unless otherwise provided in the LLC agreement, a delegation by a member or manager of a LLC shall not cause the member or manager to cease to be a member or manager, as the case may be, of the LLC or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the LLC.

### **PART VI**

#### *Financial Matters*

#### **48. Form of contribution**

The contribution of a member to a LLC may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

#### **49. Liability for contribution**

(1) Except as provided in the LLC agreement or subsection (3), a member, his estate, successors, assigns, trustees or guardians is liable to the LLC to perform any promise to contribute cash or property, or to perform services.

(2) If a member does not make the required contributions of property or services, he is liable at the option of the LLC to contribute cash equal to that portion of the agreed value (as stated in the records of the LLC) of the contribution that has not been made, and this option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the LLC may have against the member under the agreement or other law.

(3) Unless otherwise provided in a LLC agreement, the obligation of a member to make a contribution or return of money or other property paid or distributed in contravention of this Act may be compromised only with consent of all the members.

(4) Notwithstanding the compromise, a creditor of a LLC who extends credit after the entering into of a LLC agreement or an amendment thereto that, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return.

(5) A conditional obligation of a member, (which includes contributions payable upon a discretionary call of a LLC prior to the time the call occurs) to make a contribution or return money or other property to a LLC may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member.

(6) A LLC agreement may provide that the interest of any member who fails to make any contribution that he is liable to make is subject to such penalties as are specified in the agreement.

(7) The penalty may take the form of reducing or eliminating the defaulting member's proportionate interest in a LLC, subordinating his interest to that of non-defaulting members, a forced sale of his LLC interest or forfeiture of the loan by other members of the amount necessary to meet his commitment, a fixing of the value of his LLC interest by appraisal or by formula and redemption or sale of his LLC interest at such value, or other penalty.

## **50. Profits and losses**

The profits and losses of a LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in the agreement and if the agreement does not so provide, any profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

## **51. Allocation of distributions**

Distributions of cash and other assets of the LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in a LLC agreement and, if the LLC agreement does not so provide, distributions shall be made on the basis of the agreed value (stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

## **PART VII**

### *Distribution and Resignation*

## **52. Interim distribution**

Except as provided in this Part, to the extent and at the times or upon the happening of the events specified in a LLC agreement, a member is entitled to receive from a LLC distributions before his resignation from the LLC and before the dissolution and winding up thereof.

## **53. Resignation of manager**

(1) A manager may resign as a manager of a LLC at the time or upon the happening of events specified in the LLC agreement and in accordance with the agreement.

(2) If a LLC agreement provides that a manager does not have the right to resign as manager of a LLC, a manager may nevertheless resign as manager at any time by giving written notice thereof to the members and other managers.

(3) If the resignation of a manager is in contravention of a LLC agreement, in addition to any remedies otherwise available under the law, a LLC may recover from the resigning manager damages for breach in the amount otherwise distributable to the resigning manager.

## **54. Resignation of members**

(1) A member may resign from a LLC at the time or upon the happening of events specified in the agreement and in accordance with the agreement.

(2) Except as otherwise provided in the LLC agreement, a member may resign by giving written notice to the LLC at its registered office and to each member and manager at the addresses specified in the records of the LLC.



(3) A resignation does not relieve the resigning member of the obligation to make a capital contribution.

(4) Notwithstanding the provisions of this Act, a LLC agreement may provide that a member may not resign from a LLC or assign his interests therein prior to the dissolution and winding up of the LLC.

#### **55. Distribution upon resignation**

Except as otherwise provided in the LLC agreement, a member is entitled on his resignation to receive any distribution to which he is entitled under the agreement, and if not otherwise provided in the agreement, within a reasonable time after resignation the fair value of his LLC interest as of the date of resignation based upon his right to share in distributions from the company.

#### **56. Distribution in kind**

(1) Except as provided in the LLC agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a LLC in any form other than cash.

(2) Except as provided in a LLC agreement, a member may not be compelled to accept a distribution of any asset in kind from a LLC to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset that is equal to the percentage in which he shares in distributions from the company.

#### **57. Right to distribution**

(1) Subject to sections 58 and 70, and unless otherwise provided in a LLC agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

(2) A LLC may provide for the establishment of a record date with respect to allocations and distributions by the LLC.

#### **58. Limitation on distribution**

(1) A LLC shall not make a distribution to a member or holder of an economic interest to the extent that after giving effect to the distribution, all liabilities of the LLC, other than liabilities to members on account of their LLC interests and liabilities for which the recourse of creditors is limited to specific property of the LLC, exceed the fair value of the assets of the company and for the purposes of this section the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the LLC only to the extent that the fair value of that property exceeds that liability.

(2) A member or holder of an economic interest who receives a distribution in contravention of subsection (1) and who knew at the time of the distribution that the distribution was in breach of the subsection is liable to the LLC for the amount of the distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a LLC is not liable under this Act or other law for the amount of the distribution after the expiration of three years from the date of the distribution unless any action to recover the distribution from that member is commenced prior to the expiration of the three-year period and an adjudication of liability against the member is made in the action.

(4) A LLC that contravenes subsection (1) commits an offence.

## *Assignment of LLC Interests*

### **59. Nature of interest**

- (1) A LLC interest is personal property.
- (2) A member has no interest in specific LLC property.

### **60. Assignment of interest**

(1) Unless otherwise provided in the LLC agreement, a LLC interest is assignable in whole or in part with the consent of the other members.

(2) Without the consent as provided in subsection (1)—

- (a) the assignee of a member's interest has no right to participate in the management of the business and affairs of a LLC;
- (b) an assignment entitles the assignee to share in profits and losses, to receive distributions, and allocation of income, gain, loss, deduction or credit or similar item to which the assignor was entitled, to the extent assigned.

(3) Unless otherwise provided in a LLC agreement, a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of his interest as a member.

(4) Unless otherwise provided in the LLC agreement, the pledge of or granting of a security interest, lien or other encumbrance in or against any or all of the economic interests of a member does not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(5) A LLC agreement may provide that a member's interest in the company may be evidenced by a certificate of the interest issued by the company.

(6) Unless otherwise provided in a LLC agreement and except to the extent assumed by agreement, until an assignee of a member's interest becomes a member, the assignee has no liability solely by reason of the assignment other than the return of capital contributions received by the assignee.

(7) A holder of an economic interest may bring an action to enforce his rights to receive a distribution of profits, losses or other distribution due to him from the LLC or to enforce an accounting for distributions that were improperly made.

### **61. Right of judgement creditor**

(1) On application to the Court by any judgement creditor of a member, the Court may charge the economic interest of the member with payment of the unsatisfied amount of the.

(2) To the extent so charged, the judgement creditor has only the rights of an assignee of the economic interest.

(3) The entry of a charging order is the exclusive remedy by which a judgement creditor of a member may satisfy a judgement out of the judgement debtor's LLC interest.

(4) A creditor of a member shall not have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the LLC.

(5) This Act does not deprive any member of the benefit of any exemption laws applicable to his interest as a member.

### **62. Right of assignee to become member**

(1) An assignee of a member's interest may become a member as provided in the LLC agreement—

- (a) with the approval of the members of the LLC other than the member assigning his interest; or
- (b) upon compliance with any procedure provided for in the LLC agreement.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the agreement and this Act.

(3) Notwithstanding subsection (2), and subject to subsection (4), unless otherwise provided in a LLC agreement, an assignee who becomes a member assumes the obligations of his assignor to make contributions as provided in section 49, but is not liable for the obligations of his assignor under Part VII.

(4) The assignee is not liable for liabilities, including the obligations of his assignor to make contributions as provided in section 49, unknown to the assignee at the time he became a member and that could not be ascertained from the agreement.

(5) Whether or not an assignee of a member's interest becomes a member, the assignor is not released from his liability to a LLC under Part VI or VII.

### **63. Estate of deceased or incapacitated member**

(1) Unless otherwise provided in a LLC agreement, if a member dies, becomes bankrupt or a Court of competent jurisdiction adjudges him to be incapable of managing his affairs, the member's executor, administrator, guardian, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under a LLC agreement of an assignee to become a member.

(2) If a member is a company, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

## **PART IX**

### *Dissolution*

### **64. Dissolution**

The term of a LLC may be perpetual or as otherwise provided in the LLC agreement.

### **65. Dissolution and winding up by the Court**

(1) An order for the liquidation and dissolution of a LLC may be made by the Court if—

- (a) the LLC carries on business in breach of section 9;
- (b) the LLC carries on business without at least one member;
- (c) the LLC has seriously or persistently failed to comply with this Act;
- (d) the LLC is unable to pay its debts;
- (e) the Court considers that it would be just and equitable for the LLC to be dissolved and wound up; or
- (f) the Court considers that it is not reasonably practicable for the business to be carried on in conformity with the agreement.

(2) An application to the Court for an order under subsection (1) may be made—

- (a) by the Registrar upon any one or more grounds set out in subsection (1);
- (b) by an interested person upon the grounds set out in subsection (1)(c), (d) or (e);
- (c) by a member or manager upon the grounds set out in subsection (1)(f).

(3) Unless the Court otherwise orders, where the Court makes an order under this section, the provisions of the Companies Act shall apply as if the LLC were a company being liquidated and dissolved by the Court under that Act.

## **66. Winding up**

(1) Unless otherwise provided in the LLC agreement, a manager or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty per cent of the then current percentage share or other interest in the profits of the LLC owned by all of the members or by the members in each class or group, as appropriate, may wind up the company's affairs, but the Court, upon cause shown, may wind up the company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith may appoint a liquidator.

(2) Upon the dissolution of a LLC, the persons winding up the company's affairs may, in the name of, and for and on behalf of, the company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the company's business, dispose of and convey the company's property, discharge or make reasonable provision for the company's liabilities, and distribute to the members any remaining assets of the company, without affecting the liability of members and managers and without imposing liability on a liquidator.

## **67. Notice to the Registrar**

(1) Notice in writing must be given to the Registrar of the matters set out in paragraphs (a) to (d) by the persons specified in the paragraph—

- (a) an order for judicial dissolution under section 65, by the applicant for the order;
- (b) the winding up of a LLC under section 66, by the person carrying out the winding up;
- (c) an order for the winding up by the Court of a LLC under section 66, by the applicant for the order; and
- (d) the appointment of a liquidator under section 66, by the liquidator,

within twenty-one days of the order, commencement of the winding up or appointment of the liquidator, as the case may be.

(2) A person who contravenes subsection (1) commits an offence.

## **68. Dissolution of LLC with no property or liabilities**

(1) Unless otherwise provided in the LLC agreement, a LLC that has no property and no liabilities may file articles of dissolution in the prescribed form.

(2) Articles of dissolution must be signed by the manager or by the registered agent of the LLC.

(3) If the Registrar is satisfied that the requirements of this Act in respect of dissolution have been complied with including those of subsections (1) and (2), the Registrar may, upon receipt of articles of dissolution, issue a certificate of dissolution and strike the company off the Register.

(4) The company is dissolved on the date shown in its certificate of dissolution.

#### **69. Dissolved LLC to be struck from the Register**

The Registrar shall upon the conclusion of the dissolution and winding up of a LLC under this Part, strike the LLC off the Register.

#### **70. Distribution of assets**

(1) Upon the winding up of a LLC, the assets shall be distributed as follows—

- (a) to creditors, including members or managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 52;
- (b) unless otherwise provided in the agreement, to members and former members in satisfaction of liabilities for distributions under section 52 or 55; and
- (c) unless otherwise provided in the agreement, to members first for the return of their contributions and second respecting their economic interests, in the proportions in which the members share in distributions.

(2) A LLC that has been dissolved shall pay or make reasonable provision to pay all claims and liabilities, including all contingent, conditional or unmatured claims and liabilities that are known to the company and all claims and obligations that are known to the company but for which the identity of the claimant is unknown.

(3) If there are sufficient assets, the claims and liabilities shall be paid in full and provision for payment made shall be made in full.

(4) If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority and, among claims and liabilities of equal priority, rateably to the extent of assets available therefor.

(5) Unless otherwise provided in the agreement, any remaining assets shall be distributed as provided in this Act.

(6) A liquidator of the company who has complied with this section is not personally liable to the claimants of the dissolved LLC by reason of his actions in winding up the company.

#### **71. Striking LLC from Register and dissolution**

(1) The Registrar may strike a LLC from the Register if—

- (a) the LLC contravenes any provision of this Act; or
- (b) he is satisfied that the company has ceased to carry on business or is not in operation.

(2) Before striking a LLC from the Register under subsection (1), the Registrar shall send it a notice stating—

- (a) the grounds on which it is intended to strike the LLC from the Register; and
- (b) that, unless the LLC shows cause to the contrary and remedies the defaults set out in the notice, if any, within ninety days after the date of the notice, it will be struck from the Register.

(3) After the expiration of the time mentioned in the notice, the Registrar may, unless the LLC has shown cause to the contrary and, if appropriate, remedied the defaults set out in the notice, issue a certificate of dissolution.

(4) The LLC is struck off the Register and dissolved on the date shown in its certificate of dissolution.

(5) The Registrar shall publish a notice of the striking off and dissolution of the LLC in the *Gazette*.

(6) Where a LLC is struck off the Register and dissolved, the Registrar may, upon the application of an interested person made in the prescribed form and upon payment of the prescribed fee and any outstanding fees, revive it and issue a certificate in a form adapted to the circumstances.

(7) Any person who is aggrieved by the decision of the Registrar under this section may appeal to the Court and if the Court is satisfied that it would be just for the LLC to be revived, the Court may direct the Registrar to do so upon terms and conditions as it may consider appropriate.

## **72. Property of LLC struck off Register**

(1) Any property of a LLC that has not been disposed of at the date that it is struck off the Register vests in the Authority.

(2) When a LLC is revived under section 71, any property (other than money) that was vested in the Authority under subsection (1) on the dissolution of the LLC and that has not been disposed of must be returned to the LLC upon its restoration to the Register.

## **73. Disclaimer of property by the Authority**

(1) In this section, “**onerous property**” means—

- (a) an unprofitable contract; or
- (b) property of the LLC that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Authority may, by notice in writing published in the *Gazette*, disclaim its title to onerous property which vests under section 72.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Authority first came to the notice of the Authority on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Authority, orders otherwise, the Authority is not entitled to disclaim property unless the property is disclaimed—

- (a) within twelve months of the date upon which the vesting of the property under section 72 came to the notice of the Authority; or
- (b) if any person interested in the property gives notice in writing to the Authority requiring it to decide whether it will or will not disclaim the property, within three months of the date upon which it received the notice, whichever occurs first.

(5) Property disclaimed by the Authority under this section shall be deemed not to have vested in the Authority under section 72.

(6) A disclaimer under this section—

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the LLC, the rights, interests and liabilities of the LLC in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the LLC from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section—

- (a) shall be treated as a creditor of the LLC for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under subsection (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

## PART X

### *Continuation*

#### **74. Definitions**

In this Part—

**“certificate of formation”**, when referring to a foreign LLC, means the articles, charter, statute, memorandum or other instrument defining the constitution of the company;

**“domestic company”** means a body corporate that is incorporated or continued under the Companies Act or the International Business Companies (Amendment and Consolidation) Act;

[Chapter 143, Chapter 149.]

**“foreign company”** means a body that is incorporated or formed under the laws of a country outside of Saint Vincent and the Grenadines;

**“foreign domicile”** means the seat, *siège social*, registered office, or any other equivalent thereto under applicable law.

#### **75. Continuation**

Any foreign LLC, foreign company or domestic company may, subject to and upon compliance with the provisions of this Part, continue as a LLC under this Act.

#### **76. Application to continue**

A foreign LLC, foreign company or domestic company may continue as a LLC under this Act by filing with the Registrar an application that must be executed in accordance with section 82 and filed and recorded in accordance with section 12.

#### **77. Contents of application**

The application must, where applicable, contain—

- (a) the date on which and the jurisdiction in which the LLC, foreign company or domestic company was formed, created or otherwise came into existence;
- (b) the name of the LLC, foreign company or domestic company;
- (c) the foreign jurisdiction that constitutes the domicile;
- (d) a declaration that the continuation has been approved by all necessary company action;
- (e) a declaration that the continuation is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants or other parties in interest;

- (f) the name and address of the LLC, foreign company's or domestic company's registered office and agent in Saint Vincent and the Grenadines;
- (g) any other information required to be specified in the articles of formation under section 12; and
- (h) the amendments of its articles of formation or its equivalent that are to be effective upon filing the application.

#### **78. Documentation to be submitted**

The application to continue shall be submitted to the Registrar and must be accompanied by—

- (a) a certificate evidencing the existence in good standing of the foreign LLC, foreign company or domestic company issued by an authorised officer of the foreign domicile; and
- (b) a certified copy of the certificate of formation, articles of formation or comparable documents, with amendments, if any, and if the documents are not in English, a certified translation thereof.

#### **79. Who may execute application**

The application to continue must be in English and signed by any company officer, director, agent, trustee, manager, partner or any other person performing functions equivalent to those of any officer or manager, however named or described, who is authorised to sign such an application on behalf of the company.

#### **80. Certificate of continuation**

(1) Upon the filing of the application to continue and the documents referred to in sections 77 and 78 together with the payment of the prescribed fees, the Registrar shall, upon being satisfied that the other requirements of this Act are complied with, deliver to the LLC, foreign company or domestic company, a certificate of continuation and the company shall become domiciled and domesticated in Saint Vincent and the Grenadines as a LLC of Saint Vincent and the Grenadines and shall thereafter be subject to this Act.

(2) The LLC, foreign company or domestic company is deemed to have come into existence on the date it was first formed.

(3) The LLC, foreign company or domestic company shall immediately adapt its agreement, registration, management and records to comply with the laws of Saint Vincent and the Grenadines.

#### **81. Prior liabilities**

The continuation of a LLC, foreign company or domestic company under this Act does not affect any liabilities of the company incurred prior to the continuation.

#### **82. Applicable law**

The filing of an application to continue does not affect the choice of law applicable to prior liabilities and rights of the company, except that from the date the application is filed, the laws of Saint Vincent and the Grenadines apply to the LLC, foreign company or domestic company to the same extent as if the company had been originally formed as a LLC of Saint Vincent and the Grenadines on that date, and title to the company's assets shall also be governed by the laws of Saint Vincent and the Grenadines.

#### **83. Departure to foreign jurisdiction**



Subject to the LLC agreement and this Act, a LLC may depart from Saint Vincent and the Grenadines and become domiciled in a foreign jurisdiction in the manner provided under the laws of the foreign jurisdiction.

#### **84. Certificate of departure**

A LLC proposing to depart from Saint Vincent and the Grenadines must file with the Registrar a certificate of departure containing the prescribed information in the prescribed form.

#### **85. Effective date of departure**

(1) Upon payment of all fees outstanding in Saint Vincent and the Grenadines and upon compliance with this Act and applicable laws for transfer of domicile to the foreign jurisdiction, the departing company shall notify the Registrar as to the effective date of the transfer of domicile from Saint Vincent and the Grenadines.

(2) If the Registrar is satisfied that the requirements of this Act with regard to departure have been complied with, he may issue a certificate of departure and from the date specified in the certificate, the company is deemed to have ceased to be a LLC domiciled in Saint Vincent and the Grenadines.

#### **86. Continuation under Companies Act or International Business Companies (Amendment and Consolidation) Act**

(1) A LLC may continue—

- (a) as a company incorporated under the Companies Act in accordance with the provisions of that Act; or
- (b) as an international business company in accordance with the provisions of the International Business Companies (Amendment and Consolidation) Act.

[Chapter 143, Chapter 149.]

(2) When a LLC continues as a company incorporated under the Companies Act or the International Business Companies (Amendment and Consolidation) Act, the new entity is deemed the same entity and the rights, privileges and powers and all property and debts shall remain vested in the continued entity.

[Chapter 143, Chapter 149.]

(3) Upon the continuation of a LLC under the Companies Act or the International Business Companies Act, the Registrar shall strike the LLC from the Register and, with effect from the date of the LLC's continuation, it shall cease to be a company registered under this Act.

[Chapter 143, Chapter 148.]

### **PART XI**

#### *Derivative Actions*

#### **87. Right to bring actions**

Except as otherwise provided in the LLC agreement, a member may bring an action in the Court in the name of the LLC to recover a in its favour if managers or members with authority to do so have failed to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

#### **88. Proper plaintiff**

In a derivative action, the plaintiff must be a member at the time of the action and at the time of the transaction of which he complains, or his status as a member must have devolved upon him by operation of law or under the terms of a LLC agreement from a person who was a member at the time of the transaction.

## **89. Complaint**

In a derivative action, the complaint shall specify the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

## **90. Expenses**

If a derivative action is successful, in whole or in part, as a result of a , compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from the company.

## **PART XII**

### *Exemptions from Taxes and from Registration of Documents*

## **91. Exemptions from taxes and from registration of documents**

(1) Notwithstanding any provisions of the Income Tax Act, a LLC which complies with the provisions of section 9(2) shall not be subject to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside the State or in connection with matters of company administration which may occur in the State.

[Chapter 435.]

(2) Notwithstanding subsection (1) a LLC which complies with the provisions of section 9(2) may irrevocably elect in its articles filed with the Registrar to be liable to income tax at a rate of one per cent on its annual profits.

(3) A LLC which exercises the election under subsection (2) shall also be subject to sections 149 and 154 of the Companies Act and the Income Tax Act.

[Chapter 143, Chapter 435.]

(4) For purposes of this section, a LLC shall not be considered as making its goods or services available to residents in its ordinary course of business solely because it engages in one or more of the following activities—

- (a) maintaining bank accounts in the State;
- (b) holding meetings of directors or shareholders in the State;
- (c) maintaining corporate or financial records in the State;
- (d) maintaining an administrative or managerial office in the State with respect to assets or activities outside the State;
- (e) maintaining a registered agent in the State;
- (f) investing in entities incorporated, established or doing business in the State or being a partner in a partnership existing under the laws of the State or a beneficiary of a trust or estate which has the State as its *situs*.

(5) No estate, inheritance, succession or gift tax is payable by persons who are not persons resident or domiciled in the State with respect to any economic interest, debt obligations or other securities of a LLC.

(6) Notwithstanding any provisions of the Stamps Act to the contrary, the following are exempt from the payment of stamp duty in respect of a LLC that complies with the provisions of section 9(2)—

- (a) any instrument relating to a transfer of property to or by a LLC;
- (b) any instrument relating to transactions in respect of any economic interest, debt obligations or other securities of a LLC incorporated under this Act;
- (c) any instrument relating in any way to the assets or activities of a LLC; and
- (d) any instrument relating to the legalisation of any document pertaining to a LLC.

[Chapter 440.]

(7) Notwithstanding any contrary provisions of the Customs and Duties Act, or any enactment pertaining to the imposition of value added tax, a LLC shall be exempt from all indirect taxes, duties, levies, imposts and other charges pertaining to the importation into the State of any office furniture, equipment and other items necessary for conducting its business.

(8) A LLC shall, upon its incorporation or continuation, at no additional costs to the company, receive from the Registrar, the following certificates as appropriate—

- (a) in the case of every LLC, a certificate confirming that the company shall be totally exempt from the indirect taxes, duties and charges specified in this section;
- (b) in the case of a LLC that has not made the election under subsection (2), a certificate confirming that the company shall be totally exempt from all taxes specified in this section.

(9) Nothing in this section shall operate so as to exempt a LLC from fees or increases in fees charged under or pursuant to this Act or from any taxes arising by virtue of the company owning real property situate in the State.

## **92. Exemptions for dividends and distributions**

Any distribution whether in the nature of income or capital by a LLC to persons who are not residents shall be exempt from any tax or withholding provisions otherwise applicable under the laws of the State.

## **PART XIII**

### *Investigation of LLCs*

## **93. Investigation order**

(1) A member of a LLC or the Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the LLC and any of its affiliated companies.

(2) If, upon an application under subsection (1), it appears to the Court that—

- (a) the business of the LLC or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the LLC or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the formation, business or affairs of the LLC or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the LLC and any of its affiliated companies by an inspector.

(3) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice thereof, and the Registrar is entitled to appear and be heard.

#### **94. Contents of order**

(1) An order under section 93(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include—

- (a) an order replacing an inspector;
- (b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (c) an order authorising the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine any thing, and to make copies of any documents or records found on the premises;
- (d) an order requiring any person to produce documents or records to the inspector;
- (e) an order authorising an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and establishing rules for the conduct of the hearing;
- (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;
- (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (h) an order requiring an inspector to make an interim or final report to the Court;
- (i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) an order requiring an inspector to discontinue an investigation.

(2) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.

(3) A report received by the Registrar under subsection (2) must not be disclosed to any person other than in accordance with an order of the Court made under subsection (1)(i).

#### **95. Inspector's powers**

An inspector under this Part—

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

#### **96. Hearing *in camera***

(1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, must be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear and be heard at the hearing.

(3) No person shall publish any thing relating to any proceedings under this Part except with the authorisation of the Court.

#### **97. Incriminating evidence**

A person is not excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in respect of the evidence.

#### **98. Privilege absolute**

An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

### PART XIV

#### *Miscellaneous*

#### **99. Service of process**

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

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

- (a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and
- (b) was correctly addressed and the postage was prepaid.

#### **100. Regulations**

The Minister may make Regulations as are required for the better administration of this Act, and, in particular, the Minister may make Regulations—

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act or the payment of a penalty in respect of the late filing of any document, and prescribing the amount thereof;
- (c) prescribing the contents of returns, notices or other documents required to be filed with the Registrar or to be issued by him;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of companies or classes thereof;
- (f) prescribing that specified companies be exempt from certain provisions of this Act;
- (g) respecting the conduct, duties and responsibilities of registered agents; and
- (h) respecting any other matter required for the efficient administration of this Act.

### **101. Construction and application**

To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) and liabilities relating to a LLC or to another member or manager or to another person that is a party to or is otherwise bound by the LLC agreement—

- (a) any such member or manager or other person acting under a LLC agreement is not liable to the LLC or to any such other member or manager or other person for the member's or manager's or other person's reliance in good faith on the provisions of the LLC agreement; and
- (b) the member's or manager's or other person's duties and liabilities may be expanded or restricted by provisions in a LLC agreement.

### **102. Recovery of penalties**

Any licence fee or penalty payable under this Act or the Regulations that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney-General before a Magistrate in civil proceedings as a debt due to the Crown, notwithstanding the amount sought to be recovered.

### **103. LLC dissolved by Registrar liable for fees and penalties**

(1) A LLC formed under this Act continues to be liable for all fees and penalties payable under this Act notwithstanding that the LLC has been dissolved by the Registrar under section 71 and those fees and penalties have priority over all other claims against the assets of the company.

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

### **104. Consolidated Fund**

All fees and penalties paid under this Act shall be paid into the Consolidated Fund.

### **105. Reports**

(1) A person who makes or assists in making a report, return, notice or other document—

- (a) that is required by this Act or the Regulations to be filed with the Registrar or to be sent to any other person; and
- (b) that—
  - (i) contains an untrue statement of a material fact, or
  - (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,commits an offence.

(2) A person does not commit an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

### **106. Punishment of offences**

(1) A person who commits an offence set out in column 1 of the Schedule is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in column 3 of the Schedule,

and, in either case, to the daily default fine, if any, set out opposite the offence in column 5 of the Schedule for each day during which the default continues.

(2) Where an offence set out in column 1 of the Schedule is committed by a body corporate, a director, manager, officer or, in the case of a LLC managed by its members, a member of the LLC, who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in column 3 of the Schedule,

and, in either case, to the daily default fine, if any, set out opposite the offence in column 5 of the Schedule for each day during which the default continues.

(3) Notwithstanding that the offence is punishable only on summary conviction, the Proceeds of Crime and Money Laundering (Prevention) Act applies to an offence that is set out in column 1 of the Schedule and is indicated in that column by an asterisk.

[Chapter 181.]

#### **107. General offences**

Every person who is guilty of an offence under this Act or the Regulations is, if no punishment is provided for that offence elsewhere in this Act, liable on summary conviction to a fine not exceeding ten thousand dollars.

#### **108. Order to comply**

When a person is convicted of an offence under this Act or the Regulations, the Magistrate's Court may in addition to any punishment it may impose, order that person to comply with the provision of this Act or the Regulations for the contravention of which he is convicted.

#### **109. Limitation**

A prosecution for an offence under this Act or the Regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose.

#### **110. Civil remedies unaffected**

No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

#### **111. Certificate of Good Standing**

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

- (a) the LLC is on the Register; and
- (b) the LLC—
  - (i) has paid all fees and penalties due and payable under this Act, and
  - (ii) is not otherwise in breach of this Act.

(2) The certificate of good standing issued under subsection (1) shall contain statements as to whether—

- (a) the LLC has filed with the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the LLC has filed with the Registrar articles of arrangement that have not yet become effective;
- (c) the LLC is in the process of voluntary liquidation; or
- (d) any proceedings to strike the name of the LLC off the Register have been instituted.

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**Schedule**

[Section 106.]

*Offences and Penalties*

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Penalty (corporate body)</i>	COLUMN 4 <i>Penalty (individual)</i>	COLUMN 5 <i>Daily default fine</i>
5(4)	LLC using name that has been changed by the Registrar	\$10,000	\$10,000, imprisonment for 6 months, or both	\$30
6(7)	LLC failing to change registered office	\$10,000	\$10,000	\$30
7(7)	LLC failing to change registered agent	\$10,000	\$10,000	\$30
8(7)	Registered agent failing to file copy of notice of intention to cease to act with Registrar	\$10,000	\$10,000	\$30
9(4)	LLC carrying on prohibited business or activity	\$15,000	\$10,000, imprisonment for 6 months, or both	
58(4)	LLC making a distribution resulting in its liabilities exceeding the fair value of its assets	\$25,000	\$25,000, imprisonment for 6 months, or both	
67(2)	Person failing to give Registrar notice of matters specified in section 67(1)	\$5,000	\$5,000	\$50
105(1)	Person making an untrue or misleading report, return, etc.	\$25,000	\$25,000, imprisonment for 1 year, or both	

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**CHAPTER 151  
LIMITED LIABILITY COMPANIES ACT**

**SUBSIDIARY LEGISLATION**

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*No Subsidiary Legislation*

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